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# INTERNATIONAL REVIEW

## OF THE RED CROSS



Published every two months by the  
International Committee of the Red Cross  
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The *International Committee of the Red Cross (ICRC)* and the *International Federation of Red Cross and Red Crescent Societies*, together with the *National Red Cross and Red Crescent Societies*, form the International Red Cross and Red Crescent Movement.

The *ICRC*, which gave rise to the Movement, is an independent humanitarian institution. As a neutral intermediary in the event of armed conflict or unrest it endeavours, on its own initiative or on the basis of the Geneva Conventions, to bring protection and assistance to the victims of international and non-national armed conflict and internal disturbances and tension.

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*This issue of the International Review of the Red Cross is the first prepared by the new editor but it clearly continues the course set by the previous editors, in accordance with the Review's terms of reference:*

- *to be a forum for reflection and comment and serve as a reference work on the mission and guiding principles of the International Red Cross and Red Crescent Movement;*
- *to be a specialized journal in the field of humanitarian law and of humanitarian action in general; and*
- *to serve as the official publication of the International Committee of the Red Cross.*

*In her article "ICRC neutrality and neutrality in humanitarian assistance", Denise Plattner helps to clarify what the term "neutrality" means for humanitarian action. François Bugnion, in his article "The arrival of Bourbaki's army at Les Verrières", recounts an event which initially was of importance for the history of Switzerland in the nineteenth century, but he goes on to demonstrate how this event influenced the development of protection under international law for soldiers interned in neutral States.*

*The section headed "In the Red Cross and Red Crescent world" continues and concludes the publication, begun in the previous issue, of texts and commentaries on the 26th International Conference of the Red Cross and Red Crescent (Geneva 1995).*

*The texts published under the title "Reports and documents" are all closely connected with questions concerning the implementation of international humanitarian law. In the future, this section will be expanded. The book reviews, too, will give our readers an insight into how international humanitarian law works in practice.*

*Finally, proof that we are moving with the times: the Review is on Internet!*

*One section, "Letters to the Editor", is still missing in the Review. We do not simply want to impart information, but also to provide, as mentioned above, a forum for discussion, criticism and other contributions. In future issues, adequate space will be left for readers to air their views.*

*The Review*

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# ICRC neutrality and neutrality in humanitarian assistance

by Denise Plattner

## 1. Introduction

The terms “neutral” and “humanitarian” crop up frequently in the vocabulary of international relations, thus demonstrating the credence placed in the attributes of neutrality and everything to which the word “humanitarian” can apply.

Paradoxically, however, neither neutrality nor humanitarian action is immune from criticism.

Non-governmental organizations of French origin, such as *Médecins sans frontières* (MSF), sometimes see an incompatibility between neutrality and justice.<sup>1</sup> Other experts consider neutrality from the standpoint of efficiency in relation to such objectives as those assigned to United Nations forces.<sup>2</sup> In the case of humanitarian matters, it is humanitarianism itself and all things humanitarian that have been called into question.<sup>3</sup>

For its part, the International Committee of the Red Cross (ICRC) certainly does not raise its working principles to the status of absolute values. As it is the first to admit, humanitarian action cannot put a stop to armed conflicts and so is limited in its objectives.<sup>4</sup> While the ICRC

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(Original French).

<sup>1</sup> See notes 33 and 34 below.

<sup>2</sup> See notes 46-48 below.

<sup>3</sup> See R. Brauman, “Contre l’humanitarisme”, *Esprit*, December 1991, pp. 77-85, p. 79.

<sup>4</sup> See address by Cornelio Sommaruga, President of the ICRC, to the International Conference for the Protection of War Victims, *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, pp. 365-368.

notionally holds humanitarian action to be in opposition to political action, it does recognize the merits of both and there is no question of its rejecting the latter entirely in favour of the former.

We may therefore assert that whatever is not neutral is not bad *per se* but may have other qualities based on different criteria of validity. In so doing we posit that neutrality exists, and therefore feel duty bound to define it with the utmost objectivity.

The ICRC sees three aspects to neutrality. First, it is an attribute whose outlines must be delimited because the institution is described as a neutral body. Second, it is one of the Fundamental Principles of the International Red Cross and Red Crescent Movement. We shall allude to the content of that principle and consider how it relates to the ICRC's own neutrality. Lastly, neutrality has often been mentioned in connection with humanitarian assistance over the past few years, so we shall examine the various elements of the debate before attempting to formulate a definition of neutral humanitarian assistance.

## 2. ICRC neutrality

### A. The ICRC as a neutral body

The Geneva Conventions of 1949 and Additional Protocol I of 1977 describe the ICRC as an impartial humanitarian body or organization, the relevant provisions generally using the expression "*an impartial humanitarian body, such as the International Committee of the Red Cross*".<sup>5</sup> The Statutes of the International Red Cross and Red Crescent Movement themselves refer to the ICRC as a "*neutral institution*" and as a "*specifically neutral and independent*" institution and intermediary.<sup>6</sup>

The ICRC is thus described as a humanitarian, neutral, impartial and independent body (or organization) in texts adopted by States alone, such

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<sup>5</sup> See Article 3 common to the four Geneva Conventions of 1949, Articles 9/9/9/10 of the four Conventions and Article 5, para. 3, of Additional Protocol I.

<sup>6</sup> See Article 5, paras. 2(d) and 3, of the Statutes. It should be borne in mind that the Movement's Statutes are adopted by the International Conference of the Red Cross and Red Crescent, which brings together, in principle every four years, the ICRC, the National Red Cross and Red Crescent Societies, the Federation of those Societies and the States party to the 1949 Conventions. For the text of the Statutes, see the *Handbook of the International Red Cross and Red Crescent Movement*, published by the ICRC and the Federation, 13th edition, Geneva, 1994, pp. 417-432.

as the instruments of international humanitarian law, and in those, such as the Statutes of the Movement, which have been adopted by States and by the components of the Movement itself (National Red Cross and Red Crescent Societies, International Federation of Red Cross and Red Crescent Societies and the ICRC).

It would appear at first sight that these attributes are interrelated. In the case of neutrality in particular, that of the ICRC can in our view be understood only on the basis of the first status of neutrality derived from international law, i.e., that of a neutral State.

When neutrality began to gain currency in international texts at the end of the nineteenth century, it meant the legal status of a State which had decided not to become involved in a war between two or more other States.<sup>7</sup> Neutrality was therefore understood as a status comprising all the rights and duties accruing to or incumbent upon a neutral State. The changes that have since come about in the international order have had the effect of making neutral-State status exceptional and extremely difficult to understand.<sup>8</sup>

First, the prohibition on resorting to force, introduced after the First World War, added a basis other than neutrality to the duty not to participate in hostilities. The subsequent introduction of a system of collective security under the United Nations Charter raised the question of reconciling that system with the rights and duties implied by neutral status. At the same time it led to the emergence of a multitude of *de facto* intermediate positions between neutrality and belligerence, positions to which international law attaches no specific rights or duties.<sup>9</sup> Neutrality is therefore becoming, if it has not already become, an optional attitude which third-party States reserve the right to adopt according to circumstance and regardless of the formal definition of conflicts.<sup>10</sup> Lastly, the Cold War,

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<sup>7</sup> J. Monnier, "Développement du droit international humanitaire et droit de la neutralité", *Quatre études du droit international humanitaire*, Henry Dunant Institute, Geneva, 1985, pp. 5-16, p. 5.

<sup>8</sup> D. Schindler, "Transformation in the law of neutrality since 1945", *Humanitarian Law of Armed Conflict - Challenges Ahead*, A. J. M. Delissen and G. J. Tanja eds., Martinus Nijhoff Publishers, Dordrecht, 1991, pp. 367-386, p. 370.

<sup>9</sup> *Ibid.*, p. 371 *et seq.*; see also by the same author "Aspects contemporains de la neutralité", *Académie de droit international, Recueil des Cours*, 1967, II, Tome 121, pp. 221-321, p. 272. The intermediate positions in question have been enshrined in international humanitarian law in that Article 4 B, para. 2, of the Third Geneva Convention of 1949 refers to "neutral or non-belligerent Powers" (our emphasis) and Article 9, para. 2(a), of Additional Protocol I to "a neutral or other State which is not a Party to that conflict" (our emphasis).

<sup>10</sup> J. Monnier, *op. cit.* (note 7), p. 8.

ideological confrontations and all non-belligerent forms of antagonism between States have led to a conception whereby neutrality, especially permanent neutrality, entails duties already inherent in peacetime, the idea being to enable the neutral State to avoid being drawn into a conflict between other States.<sup>11</sup>

The foregoing considerations demonstrate that neutrality does not simply mean non-participation in hostilities, for if that were the case there would be no need to distinguish between neutral and non-belligerent States. Indeed, non-participation in hostilities is the hallmark of both positions. The difference lies in the reason for non-participation: a neutral State plays no part in them because it is precluded from doing so by virtue of its status; and a non-belligerent State because it has so decided. In most cases that choice corresponds to the obligation not to resort to force in international relations.

In other words, while neutrality implies non-participation in hostilities, the reverse is not necessarily true. The position of a neutral State is therefore characterized by duties other than non-participation in hostilities.

Professor Torrelli summarizes those duties by describing neutrality as the position of a State which intends, at all times or on occasion, to stand apart from a conflict, adding that it is based on the two essential principles of abstention and impartiality.<sup>12</sup> According to Professor Schindler, the duties of neutral States may be broken down into the three duties of abstention, prevention and impartiality.<sup>13</sup>

For a neutral State, the duty of abstention implies an obligation not to provide military assistance to the belligerents. The duty of prevention obliges the neutral State to prevent the belligerents from using its territory for bellicose purposes or committing from its national territory acts that are contrary to the law of neutrality. Lastly, the duty of impartiality obliges the neutral State to apply equally to both sides those rules which it has set itself in regard to its relations with the belligerents.<sup>14</sup>

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<sup>11</sup> D. Schindler, *op. cit.* (note 9), pp. 307 *et seq.*; see C. Dominicé, "La neutralité et l'assistance humanitaire", *Annales de droit international médical*, No. 35, 1991, pp. 118-126, p. 118, and J. Monnier, *op. cit.* (note 7), p. 9.

<sup>12</sup> M. Torrelli, "La neutralité en question", *Revue Générale de Droit International Public*, Tome 96/1992/1, pp. 5-43, p. 7.

<sup>13</sup> D. Schindler, *op. cit.* (note 8), p. 379.

<sup>14</sup> *Ibid.*, p. 380.

Neutral status therefore implies duties "not to do" (or "not to allow to do"). When it comes to action ("doing"), this must be done in such a way as to respect the duty of impartiality. Since that duty certainly does not exist in the case of non-belligerent States, it may be regarded as most characteristic of those embracing neutrality.<sup>15</sup> Returning to the essence of neutrality and allowing it a scope which encompasses its possible implications in peacetime, neutrality may therefore be understood as a duty to abstain from any act which, in a conflict situation, might be interpreted as furthering the interests of one party to the conflict or jeopardizing those of the other.<sup>16</sup>

In describing the ICRC in turn as an impartial body and as a neutral institution, States have endowed it with the component parts of neutral-State status. There are probably several reasons for this. Any status is both rewarding and restrictive. States certainly have an interest in ensuring that a body operating in countries at war respects the duties of neutrality, and they would never have assigned the ICRC the powers it enjoys without guarantees for their own military and political security. Moreover, by observing the principles of abstention and impartiality from the outset, of its own free will and at all times, the ICRC has won the confidence of States and has been assigned under international rules tasks that were initially based on less solid legal grounds.<sup>17</sup>

The ICRC can be described as a neutral body because it is in the unique position of being both non-governmental and endowed with legal personality under international law. The fact that the ICRC is made up of physical persons and not of States guarantees that its decisions do not arise from a will to give favourable or unfavourable treatment to the parties to a conflict with whom it has to deal. The single-nationality composition of the Committee, which, pursuant to Article 5, para. 1, of the Statutes of the Movement, recruits its members by cooptation from among Swiss citizens, is seen by States as a further guarantee of the ICRC's neutrality. It has to be stressed, however, that a careful distinction must be drawn between ICRC neutrality and that of Switzerland, which probably helped bring the former into being.<sup>18</sup>

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<sup>15</sup> H. Meyrowitz, *Le principe de l'égalité des belligérants devant le droit de la guerre*, Paris, 1970, p. 392.

<sup>16</sup> C. Swinarski, "La notion d'un organisme neutre et le droit international", *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, C. Swinarski ed., ICRC, Geneva, 1984, pp. 819-835, p. 823.

<sup>17</sup> *Ibid.*, p. 833.

<sup>18</sup> See C. Sommaruga, President of the ICRC, "Swiss neutrality, ICRC neutrality: are they indissociable? — An independence worth protecting", *IRRC*, No. 288, May-June 1992, pp. 264-273.

On the other hand, it is doubtful whether a body could be granted the permanent ability to act as a neutral intermediary unless its lack of subordination to other subjects of international law were established.<sup>19</sup> It follows that neutral status, if attributed to an entity other than a State, presupposes international personality. In any event, the fact that the ICRC is designated to act as a substitute for the Protecting Power testifies to its capacity to have rights and obligations under international law, and its international personality now seems to be generally acknowledged.<sup>20</sup>

The neutrality of an entity other than a State implies duties of abstention which, insofar as they are relevant to such an entity, are no different from those of a neutral State. It may be noted in that respect that the fact of not taking part in hostilities holds good for both international and non-governmental organizations. On the one hand, at least one inter-governmental organization, namely the United Nations, is entitled to resort to armed force under Chapter VII of its Charter. On the other, armed force may be used outside the monopoly of States. For instance, it is significant that the Statutes of the Movement prescribe for its component organizations the duty not to "*take sides in hostilities*".<sup>21</sup> Similarly, the organizations also have to consider the question of armed protection (or military escorts) for relief consignments in the light, *inter alia*, of the principle of neutrality.<sup>22</sup>

The ICRC's duty of impartiality can come into play only within its own particular sphere of activity, that is, aiding the victims of armed conflicts and internal disturbances. This means that the ICRC will adopt the same attitude to all parties to the conflict and will be guided solely by the best interests of the individuals covered by that sphere of activity.<sup>23</sup> The ICRC is therefore a neutral and humanitarian body or, according to the wording of the Geneva Conventions and Additional Protocol I, an impartial humanitarian body (or organization).<sup>24</sup>

<sup>19</sup> C. Swinarski, *op. cit.* (note 16), p. 826. D. Schindler, "Die Neutralität des Roten Kreuzes", *Des Menschen Recht zwischen Freiheit und Verantwortung*, Festschrift für K. J. Partsch zum 75. Geburtstag, J. Jekewitz, K. H. Klein, J. D. Kühne, H. Petersmann, R. Wolfrum (eds.), Dunker & Humblot, Berlin, 1989, pp. 141-152, p. 145.

<sup>20</sup> See Articles 10/10/10/11 of the four Geneva Conventions and Article 5 of Additional Protocol I. For the international personality of the ICRC, see in particular C. Dominicé, "L'Accord de siège conclu par le Comité international de la Croix-Rouge avec la Suisse", *Revue Générale de Droit International Public*, Tome IC-1995, pp. 5-36, p. 25 *et seq.*

<sup>21</sup> See section 2B below.

<sup>22</sup> See section 3B below.

<sup>23</sup> See section 2B below.

<sup>24</sup> See the articles quoted in note 5 above.

Let us now consider the link between the attributes of “*neutrality*” and “*independence*”.

We have already identified independence in the technical sense as a quality related to international personality. In the ordinary sense, any body that is not subordinate to another must be regarded as independent. From that perspective non-governmental organizations must, like intergovernmental organizations, be independent to the extent that they enjoy legal personality arising from national or international law. Lastly, the body of law governing the components of the International Red Cross and Red Crescent Movement suggests a third acceptance of the term “independence”, namely, that of a principle linking those components and having its own scope.

The principle of independence is spelled out in the preamble to the Statutes of the Movement: “*The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement*”.

The key word here is certainly “*autonomy*”, for as Jean Pictet wrote: “*Under the penalty of being something else than what it is, the Red Cross must be sovereign in its decisions, acts and words; it must be free to show the way towards humanity and justice. It is not admissible for any power whatsoever to make it deviate from the line established for it by its ideals*”.<sup>25</sup> Seen in that light, independence appears to distinguish the ICRC from other intergovernmental and non-governmental organizations. Since the autonomy of the ICRC (which is not an auxiliary of the public authorities and does enjoy international personality) must be acknowledged to be greater than that of the National Societies, it can be said that its independence is determined by its non-governmental composition and its status as a neutral body.

## **B. Neutrality as a principle of the International Red Cross and Red Crescent Movement**

According to the Preamble to its Statutes, the Movement<sup>26</sup> is “*guided*” by seven Fundamental Principles, namely, humanity, impartiality, neutral-

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<sup>25</sup> J. Pictet, *The Fundamental Principles of the Red Cross, Commentary*, Henry Dunant Institute, Geneva, 1979, pp. 61-62.

<sup>26</sup> In regard to the Statutes, see note 6 above.

ity, independence, voluntary service, unity and universality. Paragraph 1 of Article 3 states that the National Societies carry out their humanitarian activities "*in accordance with the Fundamental Principles*". For its part the ICRC must "*maintain and disseminate*" the Fundamental Principles (Article 5, para. 2a). Lastly, the Federation is required to perform its functions *inter alia* within "*the context of the Fundamental Principles*" (Article 6, para. 4).

The second principle of the Movement is impartiality, defined as follows: "*[The Movement] makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress*".

The principle of neutrality is formulated as follows: "*In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature*".

Both those principles thus impose the duties of abstention and of impartiality which have characterized State neutrality from the outset. Moreover, the requirement of abstention goes beyond the context of hostilities; it extends to "*not engaging in controversies of a political, racial, religious or ideological nature*",<sup>27</sup> in keeping with the conception of State neutrality as developed in particular since the Second World War. As in the case of States, that restriction defines neutrality in peacetime and is intended to preserve wartime neutrality. As the Statutes indicate, the main point is to avoid undermining the trust of entities which one day may be involved in an armed confrontation. We may thus distinguish, as Jean Pictet does, between ideological neutrality and military neutrality.<sup>28</sup>

One author says: "*(...) the principle of impartiality lays down two clear rules of conduct: (a) there must be no discrimination in distributing the aid given by the Movement (either in peacetime or in time of conflict or disturbances); and (b) relief must be proportionate to need—the greater the need, the greater the relief*".<sup>29</sup> As portrayed in the Statutes of the

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<sup>27</sup> M. Harroff-Tavel, "Neutrality and impartiality—The importance of these principles to the International Red Cross and Red Crescent Movement and the difficulties involved in applying them", *IRRC*, No. 273, November-December 1989, pp. 536-552, p. 537.

<sup>28</sup> J. Pictet, *op. cit.* (note 25), pp. 54-56.

<sup>29</sup> M. Harroff-Tavel, *op. cit.* (note 27), p. 538.

Movement, impartiality means both non-discrimination and proportionality.

Closer scrutiny reveals that those requirements are derived from neutrality as applied to inter-State relations rather than covered by neutrality itself. Since the Movement is involved in humanitarian action by virtue of its first principle, that of humanity, certain criteria must be set to ensure that its action takes place within a framework capable of guaranteeing neutrality, particularly in relief operations. Non-discrimination applies more to relations with individuals than with communities, although the proscribed distinctions could lead to favouring one community at the expense of its adversary. Proportionality refers to the only criterion which must be taken into consideration once a relief operation is decided upon. Non-discrimination and proportionality are therefore the negative and positive poles of a neutral humanitarian operation.

Conversely, the impartiality to be observed in a situation where communities are in conflict implies, like State neutrality, that all be treated equally. Thus while non-discrimination and proportionality are relevant only in relation to an operation, particularly a relief operation, impartiality as an intrinsic facet of neutrality<sup>30</sup> involves the entire decision-making process of a humanitarian organization.

That aspect of neutrality is not expressly set out in the Statutes of the Movement. It is true that it is of concern primarily to the ICRC because its value becomes apparent essentially in situations of armed conflict. It is indeed vital for the ICRC to adopt an even-handed attitude towards the belligerents if it is to continue to be regarded - perceived - as neutral by those belligerents. By way of example, the fields of activity to which the duty of equal treatment applies include the interpretation of humanitarian law, offers of services in the event of non-international armed conflicts<sup>31</sup> and the denunciation of violations of humanitarian law.<sup>32</sup>

It is in regard to the issue of denouncing violations of the law that neutrality has been called into question by non-governmental organizations of French origin. With hindsight, their objections appear to be based

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<sup>30</sup> J. Pictet, *Red Cross Principles*, ICRC, Geneva, 1956, pp. 70-71.

<sup>31</sup> Y. Sandoz, "Le droit d'initiative du CICR", *Jahrbuch für internationales Recht*, Vol. 22, 1979, pp. 353-373, p. 368; M. Harroff-Tavel, *op. cit.* (note 27), p. 544.

<sup>32</sup> See "Action by the ICRC in the event of breaches of international humanitarian law", *IRRC*, No. 221, March-April 1981, pp. 76-83, p. 81 *et seq.*

on two premises: neutrality imposes silence<sup>33</sup> and, from the standpoint of justice, silence is reprehensible.<sup>34</sup>

In fact, as Yves Sandoz has noted, "(...) *silence has never been set up as a principle by the ICRC. The question has always been considered from the angle of efficiency in achieving the objective set by the principle of humanity*".<sup>35</sup> A simple proof of this is that the ICRC does not always abstain from denouncing humanitarian law violations; it subjects denunciations to certain conditions, notably the requirement that any such publicity be in the interests of the persons or populations affected or under threat.<sup>36</sup> As to the antithesis between justice and neutrality, this has not been denied by ICRC representatives. Jean Pictet wrote: "*For while justice gives to each according to his rights, charity apportions its gifts on the basis of the suffering endured in each case (...). It refuses to weigh the merits and faults of the individual*".<sup>37</sup> Now that *Médecins sans frontières* is considering whether neutrality should not be abandoned,<sup>38</sup> the positions of the two organizations concerning the interpretation of the principle are apparently coming together. Any divergence would then clearly arise in relation to the merits of the principle, since the French organization appears to want to preserve the possibility of speaking out on some occasions.<sup>39</sup>

The ICRC for its part has always regarded neutrality not as an end in itself but as a means of carrying out its mandate on behalf of victims

<sup>33</sup> On the link between neutrality and the attitude of the ICRC with regard to violations of humanitarian law, see J. Pictet, *op. cit.* (note 30), p. 73 and, for a paper on "*silence*", B. Kouchner, *Le malheur des autres*, Éditions Odile Jacob, Paris, 1991, p. 107 *et seq.*

<sup>34</sup> See, for example, A. Desthèxe, former Secretary-General of *Médecins sans frontières*, who in a work admittedly written in his personal capacity said the following: "*The humanitarian world needs only one neutral organization: the International Committee of the Red Cross (ICRC) is essential and quite sufficient (...). Private humanitarian action must break free from the double yoke of simple compassion and neutrality and arm itself with a demand for justice.*" A. Desthèxe, *Rwanda: essai sur le génocide*, Éditions Complexe, Brussels, 1994, p. 87.

<sup>35</sup> Y. Sandoz, "'Droit' or 'devoir d'ingérence' and the right to assistance: the issues involved", *IRRC*, No. 288, May-June 1992, pp. 215-227, p. 226.

<sup>36</sup> *Op. cit.* (note 32), p. 81.

<sup>37</sup> J. Pictet, *op. cit.* (note 30), p. 48.

<sup>38</sup> V. Kassard, "Vous dites neutralité?", *Messages — Journal interne des Médecins sans frontières*, No. 78, May 1995, p. 2.

<sup>39</sup> In the article cited in note 38, for instance, V. Kassard states: "*Médecins sans frontières* practices occasional neutrality — neutrality yes, but MSF action first — and it is sometimes invoked as a brake on speaking out!"

of armed conflict and internal disturbances.<sup>40</sup> It therefore regards respect for the different duties implied by neutrality as essential for maintaining its status and its functions.

### 3. Neutrality of humanitarian assistance

#### A. Elements of the debate

It is only fairly recently that experts in international relations have started focusing on neutrality as it pertains to humanitarian assistance. Their interest is closely related to the favourable light in which all things humanitarian are regarded and, above all, to the development of coordination of humanitarian action within the United Nations system. Their thinking has sometimes strayed beyond the bounds of the actual provision of relief to cover everything intended to protect the individual from threats to his or her life, physical integrity and dignity.<sup>41</sup> Seen from that angle, neutrality is divested of its legal meaning and becomes a criterion for distinguishing between different forms of international action.

Even the neutrality of humanitarian law is sometimes invoked;<sup>42</sup> here, the implementation of humanitarian law cannot be regarded as detrimental to the military or political positions of the parties to a conflict<sup>43</sup> because its rules have been adopted by States as an acceptable compromise between military necessity and humanitarian imperatives. That case apart, scrutiny of other branches of international law in the light of the concept of neutrality seems inappropriate and likely to lead to misunderstandings. Impartiality, on the other hand, is a relevant principle for application of the law and, more specifically, for the administration of justice. However, it has a very precise meaning and only a remote bearing on neutrality.

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<sup>40</sup> See *inter alia* J. Pictet, *op. cit.* (note 30), p. 58; Y. Sandoz, *op. cit.* (note 35), p. 234; M. Harroff-Tavel, *op. cit.* (note 27), p. 580; J. Meurant, "Principes fondamentaux de la Croix-Rouge et humanitarisme moderne", *Studies and essays in honour of Jean Pictet*, *op. cit.* (note 16), pp. 893-911, p. 899.

<sup>41</sup> For instance, "The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies" (published by the World Conference on Religion and Peace, February 1994), which mention neutrality and impartiality among their principles, are guidelines covering a field of activity far wider than the mere provision of relief.

<sup>42</sup> See for example T. A. von Baarda, "The involvement of the Security Council in maintaining international humanitarian law", *Netherlands Quarterly of Human Rights*, Vol. 12, 1994, No. 2, pp. 137-152, p. 146.

<sup>43</sup> J. Pictet, *Humanitarian law and the protection of war victims*, A. W. Sijthoff, Leyden/Henry Dunant Institute, Geneva, 1975, p. 44.

In considering neutrality as applied to assistance, a distinction must be made between activities related to the distribution of relief, which are designated by the word "*assistance*", and other forms of action which may be undertaken by organizations operating in the sphere of food and medical relief. As Professor Torrelli points out, the impact that the denunciation of alleged violations of the applicable rules might have on relief operations must be considered.<sup>44</sup> This distinction is similar to that which must be drawn between the neutrality of an entity and neutrality as applied to a given form of international action.

Abstention and impartiality as applied to the action of United Nations forces has recently come in for criticism by several writers. "*Humanitarian aid may rest upon universalist motives and principles, but in its implementation it inevitably takes on a partisan political character, long considered inappropriate for peacekeepers under the UN banner as a threat to their impartiality.*"<sup>45</sup> "*If impartiality and neutrality are compromised, an ongoing humanitarian operation should be reconsidered, scaled down or terminated.*"<sup>46</sup> Then again, "*in intra-State conflicts impartiality has often failed to restore peace and, in some cases such as Bosnia, may have actually prolonged suffering.*"<sup>47</sup> "*Is the conclusion, then, that being neutral and impartial is not enough?*"<sup>48</sup>

In theory, the objections raised in regard to discrepancies between the objectives of United Nations forces and observance of abstention and impartiality should not compromise the position of the ICRC. However, since these objections do not always draw a distinction between the military and the humanitarian applications of the concept of neutrality,

<sup>44</sup> M. Torrelli, "From humanitarian assistance to intervention on humanitarian grounds", *IRRC*, No. 288, May-June 1992, pp. 228-248, p. 241.

<sup>45</sup> See M. Pugh, *International Peacekeeping*, Vol. 1, Winter 1994, No. 4, pp. 503-505, p. 503; T. G. Weiss and L. Minear, "Humanitarian aid across borders: Sustaining civilians in times of war", Lynne Rienner Publishers, Colorado and London, 1993; for comments on neutrality in the work in question, see G. Smith, "Relief operations and military strategy", pp. 97-116, p. 98.

<sup>46</sup> See "Military support for humanitarian aid operations; IISS — strategic comments", *IISS — International Institute for Strategic Studies*, No. 2, 22 February 1995.

<sup>47</sup> See S. Duke, "The United Nations and intra-State conflict", *International Peacekeeping*, Vol. 1, No. 4, Winter 1994, pp. 375-393, p. 389. Similarly, see R. K. Betts, "The delusions of impartiality", *Foreign Affairs*, November-December 1994, pp. 20-33, p. 20.

<sup>48</sup> See A. Donini, "Beyond neutrality: on the compatibility of military intervention and humanitarian assistance", *The Fletcher Forum of World Affairs*, Vol. 19, No. 2, Summer/Fall 1995, pp. 31-45, p. 44.

they may be construed as blanket criticism of the principle, covering all the fields to which it may be applied.

As to the application of the principle of neutrality among non-governmental organizations, one such organization has claimed that *"the devaluation of the ICRC's concepts, symbols and procedures through their adoption by other less scrupulous relief organizations has profound implications for the integrity of the ICRC itself"*.<sup>49</sup> While we do not fully share the pessimism of that organization, much less its severity, we do think that a clarification of terms is needed and could prove helpful to those studying certain forms of international action in the light of the principle of neutrality.

## B. In search of a definition

Neutrality applicable to relief operations for victims of armed conflict does seem to exist as a legal concept.

First, the relevant provisions of Additional Protocols I and II mention two conditions closely associated with neutrality, namely impartiality and non-discrimination. For instance, Article 70, para. 1, of Additional Protocol I refers to *"relief actions which are humanitarian and impartial in character and conducted without any adverse distinction"*; similarly, Article 18, para. 2, of Additional Protocol II deals with *"relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction"*.

Moreover, United Nations General Assembly resolutions on strengthening the coordination of emergency humanitarian aid provided by the United Nations generally refer to the principles of humanity, neutrality and impartiality.<sup>50</sup> In particular, the guiding principles annexed to reso-

<sup>49</sup> "Humanitarianism unbound", *African Rights*, Discussion Paper No. 5, November 1994, p. 25.

<sup>50</sup> For instance, resolution 43/131 of 8 December 1988 recalls that "in the event of natural disasters and similar emergency situations, the principles of humanity, neutrality and impartiality must be given utmost consideration by all those involved in providing humanitarian assistance". In resolution 45/100 of 14 December 1990, the General Assembly expresses awareness "that alongside the action of Governments and intergovernmental organizations, the speed and efficiency of this assistance often depend on the help and aid of local and non-governmental organizations working in an impartial manner and with strictly humanitarian motives" and "stresses the important contribution made in providing humanitarian assistance by intergovernmental and non-governmental organizations working impartially and with strictly humanitarian motives". In resolution 48/57 of 14 Decem-

lution 46/182 of 19 December 1991 include the following: "2. *Humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality.*"

Similarly, many texts issued by bodies concerned with relief operations cite neutrality and/or impartiality as guidelines for their activity or for assistance activities in general. For example, neutrality is included in "*Humanitarian principles and dilemmas during operations in areas of armed conflict*" of the United Nations Development Programme (UNDP);<sup>51</sup> impartiality and neutrality are mentioned in "*The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies*",<sup>52</sup> and in the "*Guiding Principles on the Right to Humanitarian Assistance*" adopted by the Council of the International Institute of Humanitarian Law at its session in April 1993.<sup>53</sup> Occasionally the same principles even crop up in texts unrelated to situations of armed conflict, which at first sight may seem surprising in that neutrality presupposes the existence of communities in conflict.<sup>54</sup> Lastly, eminent specialists like C. Dominicé<sup>55</sup> and M. Torrelli<sup>56</sup> have studied neutrality in connection with humanitarian assistance.

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ber 1993, the General Assembly "stresses the importance of the Emergency Relief Coordinator participating fully in the overall United Nations planning of responses to emergencies in order to serve as the humanitarian advocate in ensuring that the humanitarian dimension, particularly the principles of humanity, neutrality and impartiality of relief assistance, is taken fully into account". Lastly, in resolution 49/139 of 20 December 1994, it "takes note of the measures outlined by the Secretary-General in his report for strengthening field coordination of humanitarian assistance, and acknowledges the need further to develop and strengthen system-wide coordination, including cooperation among operational agencies, the Department of Humanitarian Affairs and non-governmental organizations, in accordance with the provisions of resolution 46/182, to improve the capability for a quick and coordinated response to natural disasters and other emergencies while preserving the non-political, neutral and impartial character of humanitarian action".

<sup>51</sup> Module prepared by L. Minear and T. Weiss. UNDP-DHA, Disaster Management Training Programme, 1994, p. 30.

<sup>52</sup> See note 41 above.

<sup>53</sup> Published in *IRRC*, No. 297, November-December 1993, pp. 519-525. Also worth mentioning are Resolution 12 on humanitarian assistance in situations of armed conflicts adopted by the Council of Delegates in Budapest in 1991, *IRRC*, No. 286, January-February 1992, p. 56, and Resolution 11 on the principles of humanitarian assistance, adopted by the Council of Delegates in Birmingham in 1993, *IRRC*, No. 297, November-December 1993, p. 502. The main purpose of those resolutions is to define humanitarian assistance.

<sup>54</sup> See for example the "*Guidelines on the use of military and civil defence assets in disaster relief*", United Nations DHA, Geneva, Project DPR 213/3 MCDA, May 1994, p. 62 *et seq.*, p. 64.

<sup>55</sup> C. Dominicé, *op. cit.* (note 11), p. 120.

<sup>56</sup> M. Torrelli, *op. cit.* (note 12), p. 37.

However, none of the texts to which we have referred offers a definition of neutral humanitarian assistance. In our view, therefore, such a definition can be formulated only on the basis of a number of elements drawn from current law and thinking on the matter, as outlined below.

1. *Neutral assistance is assistance whose validity is grounded in international humanitarian law.* Article 70 of Protocol I and Article 18, para. 2, of Protocol II mention two conditions closely associated with neutrality, i.e., impartiality and non-discrimination. Moreover, neutrality is regarded as a principle of humanitarian law, which implies *inter alia* that “humanitarian assistance is never interference in a conflict”.<sup>57</sup>
2. *Neutral assistance does not constitute interference in an armed conflict or an unfriendly act.* This arises from the very letter of Article 70 of Protocol I. Protocol II states more generally that none of its provisions can justify direct or indirect intervention in an armed conflict.<sup>58</sup>
3. *Assistance imposed by armed force as part of a unilateral action is interference and therefore does not meet the criterion of neutrality.* Two authors who have studied the right to intervene, namely O. Corten and P. Klein, contrast unarmed humanitarian operations undertaken following arbitrary refusal by a State with unilateral armed reactions which they consider prohibited by international law.<sup>59</sup> As an example of the former, they cite the 1987 parachuting of food and medicines by Indian aircraft into Jaffna, in the Tamil-controlled area of Sri Lanka, although they conclude that the operation remained of dubious legality because the civilian aircraft used were escorted by Mirages.<sup>60</sup>
4. *Only assistance of an exclusively humanitarian nature is neutral.* Unlike Article 70 of Protocol I, Article 18, para. 2, of Protocol II contains no reference to interference but it does stipulate that relief actions must be “of an exclusively humanitarian (...) nature”.

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<sup>57</sup> J. Pictet, *op. cit.* (note 43), p. 44.

<sup>58</sup> Article 3, para. 2; see also Article 5 of the resolution of the Institute of International Law on “The protection of human rights and the principle of non-intervention in internal affairs of states”, *Yearbook of the Institute of International Law*, 1990, Vol. 63-II, p. 339 *et seq.*

<sup>59</sup> O. Corten and P. Klein, *Droit d'ingérence ou obligation de réaction?*, University of Brussels, 1992, p. 220.

<sup>60</sup> *Ibid.*, pp. 144-145.

5. *Neutral assistance is confined to the purposes hallowed in the practice of the Red Cross.* In its ruling on the military and paramilitary activities in and against Nicaragua, the International Court of Justice took the view that “if the provision of ‘humanitarian assistance’ is to escape condemnation as an intervention in the internal affairs of [another State], not only must it be limited to the purposes hallowed in the practice of the Red Cross, namely ‘to prevent and alleviate human suffering’, and ‘to protect life and health and to ensure respect for the human being’; it must also, and above all, be given without discrimination to all in need”.<sup>61</sup>
6. *The fact that assistance is provided even though a State or another party to the conflict has arbitrarily refused an offer of relief does not divest it of its neutral character, as long as it is not accompanied by the use of armed force.* As indicated earlier, an offer of relief which meets the terms of Article 70 of Protocol I and Article 18, para. 2, of Protocol II does not amount to interference. If the arbitrary refusal persists after fruitless negotiations, any relief action undertaken despite that refusal can, at least when undertaken by a third-party State, be regarded as a legitimate *counter-measure* and therefore does not constitute interference.<sup>62</sup>
7. *The fact that assistance provided by one or other of the components of the International Red Cross and Red Crescent Movement is protected by armed escorts does not divest it of its neutral character, provided that the parties (or authorities) controlling the territory through which the convoy must pass and to which the humanitarian assistance is to be delivered have fully approved the principles and procedures of the armed escort, and that the purpose of the latter is to protect the relief supplies against bandits and common criminals.* Such were the conclusions reached by a joint working group of the ICRC and the Federation pursuant to Resolution 5 adopted by the Council of Delegates in 1993.<sup>63</sup> The same working group also stressed that the use of armed escorts should be decided upon only in exceptional cases, as a last resort and after careful weighing of the advantages and disadvantages of such a measure.

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<sup>61</sup> *Reports of Judgments, Advisory Opinions and Orders*, 1986, p. 125, para. 243.

<sup>62</sup> O. Corten and P. Klein, *op. cit.* (note 59), p. 144.

<sup>63</sup> See “Resolutions of the Council of Delegates”, *IRRC*, No. 297, November-December 1993, pp. 477-478.

8. *In order to be neutral, assistance must not be discriminatory.* Article 70 of Protocol I and Article 18, para. 2, of Protocol II both use the term “*without any adverse distinction*”. In the instruments of humanitarian law, the most comprehensive list of adverse distinctions is contained in Article 75 of Protocol I.
9. *In order to be neutral, assistance must be aimed at relieving the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.*<sup>64</sup> That requirement is laid down in particular by the International Red Cross and Red Crescent Movement’s principle of impartiality.<sup>65</sup>
10. *In order to be neutral, assistance must not favour certain groups or individuals over others.*<sup>66</sup> Distinctions other than those contained in the list of adverse distinctions and which are not justified having regard to the needs of victims therefore do not meet the condition of impartiality.
11. *Unilateral assistance is not necessarily non-neutral.*<sup>67</sup> Subject to other factors, assistance provided to victims belonging to only one party to the conflict is not contrary to the terms of humanitarian law.

Together, the above elements probably do not constitute an exhaustive definition of neutral humanitarian assistance, which has yet to be expanded by the lessons of recent practice.

The international community should in particular make up its mind about assistance provided in connection with an armed operation undertaken or authorized by the United Nations. The question at issue is whether assistance delivered by means of an operation that does not necessarily meet the criterion of abstention may nonetheless be regarded as neutral. As matters stand, it appears to be accepted that assistance protected by United Nations troops using force against one or more of the parties to an armed conflict cannot be neutral.<sup>68</sup> It therefore remains to be established

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<sup>64</sup> *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Y. Sandoz, C. Swinarski and B. Zimmermann eds, ICRC, Geneva, 1986, p. 818, para. 2801.

<sup>65</sup> See section 2B above.

<sup>66</sup> *Commentary on the Additional Protocols* (note 64), p. 818, para. 2802.

<sup>67</sup> *Ibid.*, para. 2803, and p. 820, para. 2812.

<sup>68</sup> For example, in his *Supplement to an Agenda for Peace*, United Nations Secretary-General Boutros Boutros-Ghali notes that operations requiring the use of force, except in cases of self-defence, deviate from the principles of consent of the parties, impartiality and the non-use of force, including force designed to ensure the protection of humanitarian operations while hostilities are continuing. In that connection he cites the precedents of Somalia and Bosnia-Herzegovina. See Boutros Boutros-Ghali, *Supplement to an Agenda for Peace: Position paper of the Secretary-General on the occasion of the Fiftieth Anniversary of the United Nations*, A/50/60-S/1995/1, 3 January 1995, paras. 33-35.

whether assistance distributed by military, police or civilian units involved in a coercive operation, or in a peace-keeping operation with or without coercive powers,<sup>69</sup> may be regarded as neutral.<sup>70</sup>

Be that as it may, the foregoing elements suggest that neutrality as applied to humanitarian assistance is an autonomous notion that is not dependent on the nature of the body engaging in activities covered by the term "*humanitarian assistance*". In other words a State, even if not neutral, an intergovernmental organization or a non-governmental organization may provide the victims of armed conflicts with assistance which meets the criteria of humanitarian law. It is even conceivable that in some contexts its activities may be in accordance with humanitarian law while in other theatres of operation they are not. The ICRC's assistance activities, on the other hand, must always be regarded as being in accordance with neutrality as applied to the relief of victims of armed conflicts, because there is a point of contact between ICRC neutrality, neutrality as a principle of the International Red Cross and Red Crescent Movement, and neutrality as a quality of humanitarian assistance.

#### 4. Conclusion

In the field of humanitarian action, neutrality is an attribute of the ICRC, a duty binding upon the components of the Movement, and a quality of the assistance afforded to the victims of armed conflict. The content of neutrality varies slightly in these three cases, depending on the purpose it must serve. However, it remains closely linked with the definition which introduced the concept into international law to designate the status of a State which decided to stand apart from an armed conflict. Consequently, its applications under positive law still depend on the

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<sup>69</sup> In connection with peace-keeping operations having coercive powers, see the address given by Secretary-General Boutros Boutros-Ghali to the Graduate Institute of International Studies, Geneva, 3 July 1995 (Press release SG/SM/95/147 of 3 July 1995, p. 6).

<sup>70</sup> In this respect, specialists of the United Nations system appear to prefer the term "*impartiality*" to "*neutrality*" (see ICRC, "Symposium on humanitarian action and peace-keeping operations", Geneva, 22-24 June 1994, *Report*, Geneva, 1995, p. 84). Similarly, the Convention on the safety of United Nations and associated personnel, adopted by the United Nations General Assembly on 9 December 1994, simply refers to the "*impartial and international character*" (our emphasis) of the duties of such personnel (see Article 6, para. 1b, of that Convention, the text of which is annexed to resolution A/RES/49/59).

criteria of abstention and impartiality which have characterized neutrality from the outset.

Nowadays there tends to be a "for or against" attitude to neutrality, based on its usual rather than on its legal definition, and this leads to misunderstandings which stand in the way of any objective appraisal of its meaning. Moreover, the fact that neutrality is invoked in connection with various forms of collective peace-keeping or peace-making action reveals much uncertainty on the matter.

It would therefore be useful to achieve a better understanding of neutrality as applied to the assistance afforded to the victims of armed conflict; otherwise only such assistance as is provided by the ICRC may be regarded with any certainty as being neutral. After all, it must be acknowledged that an organization's neutrality affects the entire range of activities which that organization may be called upon to perform.

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Edouard Castres, *The international ambulance in the snow*, 1872.

## The arrival of Bourbaki's army at Les Verrières

The internment of the First French Army  
in Switzerland on 1 February 1871

by François Bugnion

*"The army is ready; not a garter button is lacking"*, declared Marshal Leboeuf, Napoleon III's Minister of War, when the funds needed for mobilization were being voted.

Rarely has such an ill-considered remark been made: the French army, poorly equipped, inadequately trained and, above all, incompetently led, was soon to suffer a succession of crushing defeats. As soon as the first clashes took place in August 1870 it was forced to abandon Alsace and Lorraine, save for a few strongholds — Strasbourg, Sélestat, Neuf-Brisach, Metz and Belfort — all of which remained under siege. On 2 September Napoleon III capitulated at Sedan with 80,000 men, bringing down the Second Empire, and the Prussians marched on Paris.

The Republic proclaimed on 4 September inherited a desperate situation: Paris was under siege from 18 September and the Government of National Defence was blockaded in the capital together with its best troops; Strasbourg, in flames, was forced to surrender on 28 September; and on 27 October Marshal Bazaine capitulated at Metz with 150,000 men, enabling the Prussians to reinforce the siege of Paris, where the hungry population soon began to suffer the effects of winter cold.<sup>1</sup>

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(Original French).

<sup>1</sup> Pierre Benaerts, Henri Hauser, Fernand L'Huillier and Jean Maurain, *Nationalité et nationalisme (1860-1878)*, new ed., Presses universitaires de France, Paris, 1968, pp. 198-209.

All eyes were now focused on Paris, whose fate would decide the outcome of the war. New troops from the provinces, hastily raised and barely equipped, were thrown into battle in an attempt to break the siege of the capital. Against all odds, the Army of the Loire met some success, driving the Bavarians from the field at Coulmiers on 9 November and then marching on Beaune-la-Rolande on 28 November before being forced back to the south. On 6 December, the Prussians occupied Orléans. Paris, meanwhile, was subjected to heavy artillery bombardment and morale plunged as conditions became more and more precarious: there was no fuel to heat the houses, any bread available was inedible and the butchers' stalls began to display siege fare — horse, donkey, dog, cat and rat.<sup>2</sup>

Having failed to lift the siege, the War Ministry, serving as general staff headquarters in name if not in competence, decided to try a diversion to the east and a new army was established from the remnants of the Army of the Loire. Its task was to relieve Belfort, the town commanding the route between the Vosges and the Jura, whose garrison had so far held the besieging forces in check. Success here would threaten the invaders' lines of communication and draw part of the Prussian army well away from Paris.<sup>3</sup>

Victorious at Villersexel on 9 January 1871, the Army of the East, commanded by General Bourbaki, came within firing range of Belfort before being halted on the Lisaine. The Prussians, though fewer in number, were far better trained and three days of fierce fighting (15-17 January) failed to dislodge them from their lines. Meanwhile, the German high command launched a devastating counter-move. A new force was raised from the troops besieging Paris and, avoiding Dijon, was dispatched to attack the Army of the East from the rear, threatening its supply lines and cutting off its retreat.<sup>4</sup>

With the French demoralized by a series of defeats and exhausted by two months of ceaseless march and countermarch, the now inevitable retreat soon turned into a rout. Struggling through Arctic conditions, the ragged and ill-shod army abandoned all semblance of discipline and sometimes even the will to survive. Many soldiers threw away their weapons and equipment; others lay down exhausted in the snow and

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<sup>2</sup> *Ibid.*, pp. 209-216.

<sup>3</sup> Colonel É. Secretan, *L'Armée de l'Est (20 décembre 1870-1<sup>er</sup> février 1871)*, 2nd ed., Attinger Frères, Neuchâtel, 1894, pp. 26-48.

<sup>4</sup> *Ibid.*, pp. 154-315.

expired by the roadside. Their horses, most of which had not been unharnessed for weeks, were reduced to skin and bone; they had not been shod for winter conditions and when they fell on the ice were unable to stand up again.

On 26 January, shattered by the disasters which had befallen his army, General Bourbaki put a gun to his head and attempted suicide. On the 28th, Jules Favre, Foreign Minister of the Government of National Defence, and Count Bismarck, Chancellor of the German Empire proclaimed a few days earlier in the Hall of Mirrors, signed an armistice at Versailles which led to a suspension of hostilities on all fronts. The Army of the East, however, was excluded from the armistice, an exception which further added to the confusion and disarray of the troops.<sup>5</sup>

Realizing that the war was now lost and seeing the Prussians cutting off his last lines of retreat, General Clinchant, the successor of the unfortunate Bourbaki, after a last attempt to break through the enemy encirclement, decided to request internment in Switzerland as the only alternative to capitulation.

At dawn on 1 February 1871, General Herzog, Commander in Chief of the Swiss army, and General Clinchant signed an agreement at the border post of Les Verrières, authorizing the Army of the East to enter Switzerland on condition that it laid down its arms (see box).<sup>6</sup>

The following terms have been agreed between General Herzog, Commander in Chief of the army of the Swiss Confederation, and General Clinchant, Commander in Chief of the First French Army:

- Art. 1 The French army requesting passage shall lay down its arms, equipment and munitions upon entry into Swiss territory.
- Art. 2 The said arms, equipment and munitions shall be returned to France after the peace and upon final settlement of the expenses incurred by the stay of the French troops in Switzerland.

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<sup>5</sup> *Ibid.*, pp. 345-498.

<sup>6</sup> *Ibid.*, pp. 549-550; *Documents diplomatiques suisses* (1848-1945), vol. 2, Berne, 1985, p. 497; De Clerq, *Recueil des Traités de la France*, vol. X, p. 421; Clive Parry (ed.), *The Consolidated Treaty Series*, vol. 142, pp. 475-476.

- Art. 3 The same shall apply to artillery pieces and related munitions.
- Art. 4 Officers shall be allowed to keep their horses, arms and effects.
- Art. 5 Provision will be made subsequently for the horses of other ranks.
- Art. 6 After carriages bearing provisions and baggage have been unloaded, they shall return to France immediately, together with their drivers and horses.
- Art. 7 Paymaster and post carriages shall be delivered with all their contents to the Swiss Confederation, which will take them into account in the final settlement of expenses.
- Art. 8 The execution of the provisions of this agreement shall take place in the presence of the French and Swiss officers designated for this purpose.
- Art. 9 The Confederation reserves the right to designate the places of internment for officers and other ranks.
- Art. 10 The Federal Council shall indicate the detailed provisions intended to supplement the present Agreement.

Made in three copies at Les Verrières on 1 February 1871.

Clinchant

Hans Herzog

Throughout that day, all night and part of the following day, men, carriages, horses, artillery pieces, carriages and wagons streamed across the border in an endless procession.

*"The entry of the French troops of the Army of the East offered a striking spectacle and one's heart was profoundly moved by the sight of so much suffering",* wrote Major Davall in the official report on the French troops interned in Switzerland. He continued:

*"Once they were no longer sustained by fear of the constant danger which had followed them for weeks [...] and as soon as they felt themselves on hospitable soil, where helping hands stretched out to them from all*

sides, the soldiers collapsed completely and lost what little energy they had conserved.

A large proportion of them were marching barefoot or had wrapped their feet in rags. Their boots had been made of spongy, poorly tanned leather which could not withstand marches in snow and mud [...] and were generally too tight. Thus, the feet of many of these unfortunates were frozen or covered in blood. Their uniforms were in tatters and the soldiers, having appropriated whatever clothing they could find to replace missing items, were as motley a crew as you could ever imagine. Some of them were still in the canvas trousers they had received at the start of the campaign and were shivering pitifully.

As soon as the soldiers set foot on Swiss territory, they were disarmed and made to laid down their rifles, their sabres and their ammunition. Soon there were immense piles of weapons and effects on either side of the road.

The horses presented a particularly pathetic sight: starving, long neglected, often poorly harnessed, their hides sometimes no more than one revolting sore; thin, bony, barely able to stand, they gnawed at anything within reach — wheel rims, old sacks, the tail or main of the animal next to them. From time to time, one of these poor beasts, too exhausted to respond to the whip, would fall and expire where it lay. It would then be cut from its traces and dragged to the roadside already littered with the carcasses of other animals [...].

The drivers themselves admitted that many of the artillery horses had not been out of harness for weeks [...].

The procession began on the morning of 1 February and continued all day without interruption. First came a mixed crowd of soldiers, in no order of any kind and obeying no-one [...]. Later, some more organized units appeared: here one or two companies, there a battalion accompanied by its officers, and finally one or two complete regiments [...].

By a natural instinct of self-preservation, all these men kept close on the heels of those in front so that the march-past formed a solid column with no breaks or halts [...].

The slopes of the Jura were covered with snow, and at this season only three or four of the roads crossing into Switzerland were passable. What a strange spectacle this was to behold, with the long black lines of men winding through the countryside like a ceaseless torrent plunging down into the valley. The human flood, interspersed with thousands of

carriages, streamed on with no halt, no rest. Pushed on ceaselessly by the press from behind, crossing a sparsely populated land whose meagre resources could do little to meet such urgent needs, the soldiers made their way down into the valley until they came to a town or large village where they could at last find a moment's rest. The first troops to cross the border had to march until evening in order to leave the road open for other units to advance. When they finally arrived in inhabited areas where the population was waiting with relief supplies, these poor soldiers, hungry and exhausted, slid to the ground beside the houses and remained there squatting, inert, incapable of action and barely able to speak.

*From one end of the columns to the other there came a constant chorus of strident coughing; almost all the men had chest infections and this constant hacking contributed to their prostration."*<sup>7</sup>

The French command had given a figure of 42,000 men. In fact, the numbers that entered Switzerland were: 87,847 men (including 2,467 officers), 11,800 horses, 285 cannon and mortars and 1,158 carriages.<sup>8</sup>

General officers were allowed to choose where they were to stay in Switzerland. The troops were split up and billeted in 188 towns and villages in all the Swiss cantons — except the Ticino — in numbers proportionate to the population.<sup>9</sup>

Some 5,000 men had to be evacuated to hospital immediately, but almost everyone needed medical care and all the places where the internees were accommodated — churches, schools, barracks, etc. — were turned into infirmaries.<sup>10</sup>

On 2 February, the Federal Council instructed the Swiss minister in Paris to start negotiations with the Government of National Defence and

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<sup>7</sup> Major E. Davall, *Les troupes françaises internées en Suisse à la fin de la guerre franco-allemande en 1871. Rapport rédigé par ordre du Département militaire fédéral sur les documents officiels déposés dans ses archives*, Bern, 1873, pp. 42-44.

<sup>8</sup> É. Secretan, *op. cit.*, p. 553. When the campaign started at the end of December 1870, the Army of the East was estimated to number between 120,000 and 140,000 men.

<sup>9</sup> E. Davall, *op. cit.*, pp. 50-51, 61-62 and 83-87; É. Secretan, *op. cit.*, p. 575.

<sup>10</sup> É. Secretan, *op. cit.*, p. 579. When the Army of the East departed from Besançon on 25 January, between 8,000 and 10,000 sick and wounded men were left behind in improvised hospitals and dressing stations (*ibid.*, p. 474). Major Davall (*op. cit.*, p. 290) noted that 17,897 internees were treated in makeshift hospitals and dressing stations. However, this number does not include all those who received treatment during the first days of the internment, when no records were kept because of the urgency of the needs to which medical staff had to attend.

with Bismarck with a view to the repatriation of the internees. However, while the French were in agreement, Ambassador Kern met with a flat refusal from Bismarck, who intended to use every available means to force the French government to sign a humiliating peace treaty as quickly as possible.<sup>11</sup>

Thus it was not until the ratification of the peace preliminaries on 2 March 1871 that the Germans would consent to the repatriation of the internees. The repatriation itself took place on 13 and 14 March, with the bulk of the troops travelling by rail from Geneva and the remainder through Les Verrières and Divonne or by boat across Lake Geneva.<sup>12</sup>

About a thousand of the internees were still in hospital; they were repatriated in small groups after they had recovered. Some 1,700 internees died during their stay in Switzerland from the effects of typhus, smallpox or pulmonary disease.<sup>13</sup>

The costs arising from the internment amounted to 12 million francs. In accordance with the Agreement of Les Verrières, France reimbursed this sum in full in August 1872.<sup>14</sup>

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The war of 1870-1871 had exposed deep uncertainties with regard to the rules applicable to the conduct of hostilities, since, apart from the recently concluded Geneva Convention of 22 August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field, the law of war still remained entirely customary. These uncertainties had given rise to serious differences between the belligerents, leading to reprisal measures.

Inspired by the example which the International Committee of the Red Cross had set in proposing the adoption, in time of peace, of a convention to govern the conduct of belligerents, Tsar Alexander II called a confer-

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<sup>11</sup> *Documents diplomatiques suisses*, vol. 2, pp. 498-526; E. Davall, *op. cit.*, pp. 215-218; É. Secretan, *op. cit.*, pp. 576-578.

<sup>12</sup> E. Davall, *op. cit.*, p. 263; É. Secretan, *op. cit.*, pp. 578-579.

<sup>13</sup> E. Davall, *op. cit.*, pp. 263 and 291-297; É. Secretan, *op. cit.*, p. 579.

<sup>14</sup> E. Davall, *op. cit.*, pp. 304-311; É. Secretan, *op. cit.*, p. 579.

ence in Brussels from 27 July to 27 August 1874 to codify the laws and customs of war.

In the draft declaration which was to serve as the basis for the work of the Brussels Conference, the St Petersburg government had not envisaged any provision relating to internment in a neutral country. However, the retreat of Bourbaki's army was still too fresh in the memory for this question to be passed over. After all, never before in history had such a large army been interned in a neutral country and under such dramatic circumstances. Moreover, this internment had raised new legal problems relating to both the law of war and the law of neutrality; problems which had been resolved by Switzerland's negotiations with Germany on the one hand and with France on the other.<sup>15</sup>

The Conference, therefore, agreed without difficulty to consider the views of the Belgian delegate, who proposed that the matter be settled and submitted draft articles to this effect. Prolonged discussion led to the adoption of Articles 53 to 56 of the Brussels Declaration, which clearly bore the mark of the events at Les Verrières.<sup>16</sup>

As the Brussels Declaration was not subsequently ratified, the issue was taken up again at the First International Peace Conference, meeting in The Hague from 18 May to 29 July 1899. The articles which had been adopted in Brussels were incorporated almost word for word in the Convention Respecting the Laws and Customs of War on Land of 29 July 1899.<sup>17</sup>

Finally, having set itself the objective of codifying not only the law of war but also that of neutrality, the Second International Peace Conference, meeting in The Hague from 15 June to 18 October 1907, incorporated these provisions in the new Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land.<sup>18</sup> The

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<sup>15</sup> Other divergences relating to the law of neutrality had appeared at the start of the war, when the Prussians asked for permission to use the Belgian and Luxembourg railways to evacuate men wounded at Metz and Sedan. *Conférence internationale de la Paix, La Haye, 18 mai-29 juillet 1899*, new ed., Ministry of Foreign Affairs, The Hague, 1907, Part III, pp. 87-88.

<sup>16</sup> Actes de la Conférence réunie à Bruxelles du 27 juillet au 27 août 1874 pour régler les lois et coutumes de la guerre, in Martens (ed.), *Nouveau Recueil général de Traités*, Second Series, vol. IV, pp. 26-27, 90, 162-168, 182-189, 195-197 and 225-226.

<sup>17</sup> Articles 57 to 60 of the Regulations annexed to the Convention of 29 July 1899 with respect to the Laws and Customs of War on Land, *Conférence internationale de la Paix, La Haye, 18 mai-29 juillet 1899*, Part I, pp. 30-31, 46-47, 54-55 and annexes, pp. 27-28; Part III, pp. 22, 37-38, 46-47, 85-88 and 146.

<sup>18</sup> Hague Convention V of 18 October 1907.

Conference also determined two points on which the Brussels Conference had been unable to agree, namely, how to deal with escaped prisoners of war seeking refuge in a neutral country on the one hand, and with prisoners of war brought along by troops taking refuge in neutral territory on the other.<sup>19</sup>

Thus agreement was finally reached on Articles 11 to 15 of the Convention, which remains in force to this day. These articles form Chapter II, entitled "Belligerents Interned and Wounded Tended in Neutral Territory".

#### *Article 11*

*A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.*

*It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.*

*It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.*

#### *Article 12*

*In the absence of a special convention to the contrary, the neutral Power shall supply the interned with the food, clothing and relief required by humanity.*

*At the conclusion of the peace the expenses caused by the internment shall be made good.*

#### *Article 13*

*A neutral Power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.*

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<sup>19</sup> Second International Peace Conference, The Hague, 15 June-18 October 1907, *Actes et documents*, Ministry of Foreign Affairs, The Hague, 1907, vol. I, pp. 125, 136-150, 345-346 and 640; vol. III, pp. 33-40, 51-62, 134, 179-185, 241, 246 and 257-267.

*The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral Power.*

**Article 14**

*A neutral Power may authorize the passage over its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor war material. In such case, the neutral Power is bound to take whatever measures of safety and control are necessary for the purpose.*

*The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral Power so as to ensure their not taking part again in the military operations. The same duty shall devolve on the neutral State with regard to wounded or sick of the other army who may be committed to its care.*

**Article 15**

*The Geneva Convention applies to the sick and wounded interned in neutral territory.<sup>20</sup>*

These provisions, which pertain to both the law of war and the law of neutrality, have been applied on various occasions, notably during the two World Wars. The best-known case was that of the French 45th Army Corps, commanded by General Daille, which was encircled by the German armour of General Guderian just as the Army of the East had been by the Prussian infantry 70 years previously. Once again, the French were forced to seek refuge in Switzerland. On 18 June 1940, when Marshal Pétain had petitioned for an armistice and General de Gaulle launched his call for resistance from London, some 45,000 men, including 29,000 Frenchmen and Moroccans and 12,000 Poles who had

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<sup>20</sup> Second International Peace Conference, The Hague, 15 June-18 October 1907, *Actes et documents*, vol. I, p. 640; *Handbook of the International Red Cross and Red Crescent Movement*, 13th ed., International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, 1994, pp. 310-311.

enlisted in the French army, crossed the border a few kilometres to the north-east of Les Verrières. While the French and Moroccans were repatriated in January 1941 under an agreement between Germany and Vichy France, the Poles remained interned in Switzerland until the end of the hostilities.<sup>21</sup>

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*"The entire generation of Swiss citizens who witnessed this grim epilogue to a cruel war has kept an undying memory of the tragedy. Never before, in this fortunate country, had such a disaster been seen",* wrote Colonel Édouard Secretan by way of conclusion to his history of the Army of the East.<sup>22</sup>

Because the troops were scattered all over Switzerland, their pitiful state was plain to everyone and the public was profoundly moved. There was a tremendous surge of sympathy in the towns and villages through which the French soldiers had passed, and even more in the places where they were billeted while waiting to return to their homeland. During the first days of the internment this generosity was spontaneous, innumerable families unhesitatingly sharing with the troops the reserves of food and fodder they themselves needed to survive the winter. But the authorities and the Swiss Red Cross — founded four years previously — quickly mobilized to help the internees and provide them with the necessary food and medical care. Indeed, the reception of the "Bourbakis" was the first major aid operation conducted by the Swiss Red Cross.<sup>23</sup>

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<sup>21</sup> Edgar Bonjour, *Histoire de la neutralité suisse*, translated by Charles Oser, La Baconnière, Neuchâtel, 1970, vol. VI, pp. 41-95; André Lasserre, *Frontières et camps. Le refuge en Suisse de 1933 à 1945*, Payot, Lausanne, 1995, pp. 150-158.

<sup>22</sup> É. Secretan, *op. cit.*, p. 557.

<sup>23</sup> Unfortunately, as far as we know there is no general report covering all the activities of the Swiss Red Cross in connection with the arrival of the Army of the East. However, we do have the report of the Neuchâtel branch which, because of its geographical location, was the first to come to the assistance of the internees. This describes the arrangements which were made on an ad hoc basis during the initial passage of the troops and which became increasingly well-organized as the weeks went by: kitchens were set up to provide hot meals for soldiers passing through; the infirmaries were opened to tend the sick and wounded awaiting evacuation to hospital; both the sick and the able-bodied were accommodated in public buildings and private homes; food, clothing, fodder, firewood, etc. were distributed. Société suisse de Secours aux Militaires blessés, Neuchâtel branch, *Rapport général*, 1 July 1871, Imprimerie James Attinger, Neuchâtel, 1871.

The impression made by the arrival of the French soldiers was so deep that many who witnessed the event sought to immortalize it in print and on canvas.<sup>24</sup>

In 1876, the entrepreneur Benjamin Henneberg decided to construct a panorama to depict the events at Les Verrières and commissioned the Geneva artist Édouard Castres to do the painting. In 1880, the "Société anonyme des Panoramas de Marseille, Lyon et Genève" undertook the construction of the building in Geneva. The rotunda was of an impressive size: 40 metres in diameter and 28 metres in height. The panorama which covered the inside wall was 14 metres high.<sup>25</sup>

Édouard Castres was the obvious choice, not only because of his artistic talent but also because he had volunteered as a stretcher-bearer with the French Red Cross and had served in a mobile field hospital during the campaign of the Army of the East. On 1 February 1871 he had found himself at Les Verrières both as a participant in and as a witness to the tragedy that befell his companions in arms.<sup>26</sup> The vast circular panorama he created, covering 1,100 square metres, immortalized the ordeal of the French troops at the moment when they were crossing the Swiss frontier to be disarmed.

The panorama was inaugurated on 24 September 1881. "*The illusion is complete [...] and the whole effect is remarkable*", wrote the *Journal de Genève* at the time.<sup>27</sup>

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<sup>24</sup> André Meyer and Heinz Horat, *Bourbaki. Episoden und Erlebnisse aus der Internierungszeit der Bourbaki-Armee 1871*, Edition Erpf, Bern, 1981.

<sup>25</sup> *Ibid.*, pp. 15-16. The panorama was a mode of artistic expression which enjoyed a great vogue during the second half of the 19th century. It consisted of a circular building in the form of a rotunda, the inside wall of which was covered by a circular canvas depicting a landscape or some great historical event and designed to create an illusion of depth. The floor and ceiling were similarly decorated so that the visitor, entering the panorama by an underground passage and a spiral staircase giving access to an elevated platform in the centre of the rotunda, felt himself suddenly transported into the middle of the scene depicted. Many Western European cities had their own panoramas and the companies which operated them would circulate the canvases from one town to another. This mode of expression foreshadowed the cinema, the medium which eventually supplanted it. A few of the rotundas have survived and been converted into theatres, a good example being the "Rotonde des Champs-Élysées". To the best of our knowledge, the only panorama which has remained continuously on show since its creation is that of Les Verrières in Lucerne. According to contemporary accounts, it was also the finest of them all.

<sup>26</sup> *Ibid.*, p. 53. Édouard Castres came to prominence in 1872 with the exhibition of his painting *L'ambulance dans la neige*. This work, one of the first depicting a Red Cross mobile field hospital, won a gold medal and critical acclaim.

<sup>27</sup> *Journal de Genève*, 28 September 1881.

The *Panorama des Verrières* remained on show in Geneva until 1889. It was then moved to Lucerne where it can still be seen.<sup>28</sup> We owe a debt of gratitude to the committee formed to preserve the panorama and also to the authorities of the city and canton of Lucerne who recently allocated funds for the restoration of this exceptional work. It is the last vestige of a form of artistic expression which flourished in the 19th century but has now long since disappeared and, at the same time, it is a moving testimony to the unspeakable suffering that every war leaves in its wake.

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<sup>28</sup> Brigit Kämpfen-Klapproth, *Das Bourbaki-Panorama von Édouard Castres*, 2nd ed., Éditions de la Ville de Lucerne, Lucerne, 1983, pp. 39-47.

## ***In the Red Cross and Red Crescent World***

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*In its issue No. 310 of January-February 1996, the Review published the main texts that emerged from the 26th International Conference of the Red Cross and Red Crescent, held in Geneva from 3 to 7 December 1995. The current issue of the Review contains one of the reports which served as a basis for the work of the International Conference, and particularly of its Commission I, namely the report on the follow-up to the International Conference for the Protection of War Victims (Geneva 1993).*

*In this report, the ICRC explains its position with regard to those of the recommendations — formulated by an Intergovernmental Group of Experts at the request of the 1993 Conference for the Protection of War Victims — that concern it more directly. In addition, the ICRC and the International Federation give an account of what the various components of the International Red Cross and Red Crescent Movement are doing to implement the aforesaid recommendations.*

**26th International Conference of the Red Cross and Red Crescent  
(Geneva, 3 -7 December 1995)**

### **INTERNATIONAL HUMANITARIAN LAW: FROM LAW TO ACTION**

#### **Report on the follow-up to the International Conference for the Protection of War Victims**

Presented by the International Committee of the Red Cross,  
in consultation with the International Federation of the Red Cross  
and Red Crescent\*

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\* Report 95/C.I/2/2 (Geneva 1995)

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## Introduction

The 50 years since the end of the Second World War have been marked by a profusion of armed conflicts that have affected every continent in the world.

Throughout these conflicts, the Geneva Conventions of 12 August 1949 — and in particular Article 3 common to the four Conventions, applicable to non-international armed conflicts — together with the Protocols additional to the Geneva Conventions, adopted on 8 June 1977, have rendered invaluable services by providing legal protection for war victims: the wounded and sick in armed forces in the field; wounded, sick and shipwrecked members of naval forces; prisoners of war and civilians.

Nevertheless, there have also been countless violations of these treaties and of basic humanitarian principles, resulting in suffering and death which might have been avoided had the laws and customs of war been respected. These violations have also made it more difficult to restore peace.

The general opinion is that violations of the humanitarian rules were not due to their inadequacy, but rather to lack of willingness to respect them and, in many cases, to ignorance of their content on the part of both leaders and combatants.

The International Conference for the Protection of War Victims,<sup>1</sup> therefore, did not propose the adoption of new treaty provisions. Instead, in its Final Declaration adopted by consensus on 1 September 1993, the Conference reaffirmed "*the necessity to make the implementation of humanitarian law more effective*", and called upon the Swiss government "*to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with that law, and to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent*".

This group of experts met in Geneva from 23 to 27 January 1995, at the invitation of the Swiss government, and adopted a series of recommendations aimed at enhancing respect for humanitarian law, in particular by means of preventive measures that could ensure better knowledge and more effective implementation of humanitarian rules.

The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies can only welcome the measures proposed by the experts, as they are convinced that these measures can go a long way towards improving respect for humanitarian law and the protection of war victims. They stand ready to do everything in their power to help implement the experts' recommendations.

It is the responsibility of the Swiss government, which convened and chaired the meeting of experts, to present to the 26th International Conference of the Red Cross and Red Crescent a report on their recommendations.

For its part, the International Committee of the Red Cross wishes to explain its position with regard to the recommendations that concern it more directly.

Furthermore, the ICRC and the International Federation wish to outline how the latter and the National Red Cross and Red Crescent

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<sup>1</sup> The Conference was convened in Geneva from 30 August to 1 September 1993 by the Swiss government in its capacity as depositary of the Geneva Conventions and their Additional Protocols, on the initiative of the ICRC.

Societies are already contributing to the effective implementation of the recommendations that concern them, and their possible future contribution in this regard.

That is the purpose of the present report.

## **1. Means of facilitating participation by States in the instruments of international humanitarian law**

The objective of Recommendation I is the universal acceptance of international humanitarian law. The different recommendations grouped under this point are intended mainly to promote the humanitarian treaties among States so as to encourage ratification or accession.

The ICRC has always considered the promotion of the treaties of international humanitarian law — first and foremost the Geneva Conventions of 1949 and their Additional Protocols of 1977 — to be one of its important tasks, and will continue to carry it out.

The ICRC has interpreted this task as including the duty to provide advice to the authorities of every newly created State with a view to ensuring that it will be bound by the Geneva Conventions of 1949 and their Additional Protocols.

Moreover, acceptance of the Additional Protocols by all States party to the Geneva Conventions must be achieved. The ICRC undertakes to continue its efforts to encourage the competent national authorities to take the necessary decisions. Its legal advisers and its delegates working throughout the world are at the disposal of governments or other contacts to solve with them any legal problems that may arise in that regard.

The ICRC's representations to governments include inviting them, when they ratify (or accede to) Protocol I of 1977, to recognize the competence of the International Fact-Finding Commission provided for in Article 90 of that instrument. It also advises States bound by Protocol I which, upon becoming party to it, did not make the declaration under Article 90, to do so subsequently as provided for in the article.

These steps have been taken in close consultation with the National Red Cross or Red Crescent Societies of the countries concerned, which are in a position to provide useful advice to their respective governments on these matters.

The *International Review of the Red Cross*, a periodical published by the ICRC in the service of the International Red Cross and Red Crescent Movement, provides information from time to time on the status of ratifications or accessions, on declarations made under Article 90 of Protocol I, and on interpretative declarations and reservations made by States.

As may be seen from the ICRC's comments on Recommendation III, the ICRC will endeavour to strengthen the advisory services that National Red Cross or Red Crescent Societies may provide in this regard.

## **2. Customary rules of international humanitarian law**

### **2.1 The invitation to the ICRC**

Recommendation II of the Intergovernmental Group of Experts proposes that *"the ICRC be invited to prepare, with the assistance of experts on IHL representing various geographical regions and different legal systems, and in consultation with experts from governments and international organizations, a report on customary rules of IHL applicable in international and non-international armed conflicts, and to circulate the report to States and competent international bodies"*.

### **2.2 The ICRC's objective**

The ICRC is ready to assume this task in order to attain a practical humanitarian objective, that is, to determine what rules are applicable to humanitarian problems that are not covered by treaty provisions, or whose regulation under the treaties can be clarified by practice.

There may be no treaty-based rule governing a problem where no treaty contains such a rule, or when the treaty rule is not applicable in a particular conflict because the State concerned is not bound by the treaty codifying the rule in question.

Knowledge of customary rules is also of vital importance when it comes to determining what rules apply to armed forces operating under the aegis of organizations which are not formally parties to the international humanitarian law treaties, such as the United Nations.

### **2.3 Importance of the report in regard to international armed conflicts**

As far as international armed conflicts are concerned, the question is not of much practical interest in relation to matters governed by the Geneva Conventions of 1949, since 185 States are bound by those treaties.

Admittedly, under the constitutional system of some States, customary rules — in contrast to treaty rules — are directly applicable in domestic law. As explained elsewhere in this report (see pp. 10-13 below), the States party nonetheless have the obligation to enact legislation that ensures the incorporation of international humanitarian law into the domestic legal regime, so that all its rules, and not just those considered as customary, can and must be applied by the executive and judiciary.

Indeed, it would theoretically be very difficult to determine practice and gauge its acceptance in this respect since States, being almost all party to the Geneva Conventions, act either in conformity with or in violation of their treaty obligations. Can such behaviour also form the basis of customary rules?

As for matters governed by Additional Protocol I of 1977, the question is of more practical interest since this treaty has not yet been universally accepted. But considering that there are 137 States party, customary international humanitarian law certainly cannot be determined on the basis of the behaviour of the 54 States that are not yet bound by it. Furthermore, the evolution of international customary law has not been halted by its codification in Protocol I. Quite the contrary, it has been strongly influenced by the drafting of Protocol I and by the behaviour of States vis-à-vis this treaty.

## **2.4 Importance of the report in regard to non-international armed conflicts**

As regards non-international armed conflicts, the rules governing the protection of persons in the power of a party to a conflict have been partially codified in Article 3 common to the Geneva Conventions and in Additional Protocol II, and often do no more than spell out the “hard core” of international human rights law applicable at all times.

The establishment of customary rules will be of particular importance in another area of the law governing non-international armed conflicts, that of the conduct of hostilities. This covers mainly the use of weapons and the protection of civilians from the effects of hostilities.

In the area of the conduct of hostilities, the treaty rules specifically applicable to non-international armed conflicts are in fact very rudimentary and incomplete.

For this reason, knowledge of customary rules will be especially necessary when the ICRC prepares a model manual on the law of armed conflicts for use by armed forces and when governments produce their

national manuals. Indeed, in keeping with the recommendations of the Intergovernmental Group of Experts, these manuals should also cover non-international armed conflicts (see p. 15 below).

It will have to be determined in this regard to what extent a State may use against its own citizens methods and means of combat which it has agreed not to employ against a foreign enemy in an international armed conflict. The potential impact on international customary law of the practice of non-governmental entities involved in non-international armed conflicts and the extent of acceptance they show will also have to be determined. Finally, the question will arise as to the degree to which practices adopted under national law by the parties involved in a non-international conflict reflect acceptance of the tenets of *international* law.

## **2.5 ICRC procedure and consultations**

To prepare the report, the ICRC intends initially to ask researchers from different geographical regions to assemble the necessary factual material. Without wishing to opt for one or other of the different theories of international customary law, or attempting to define its two elements — the observance of a general practice and acceptance of this practice as law — the ICRC believes that, to establish a universal custom, the report must encompass all forms of practice and all cases of acceptance of this practice as law: not only the conduct of belligerents, but also the instructions they issue, their legislation, and statements made by their leaders; the reaction of other States at the diplomatic level, within international forums, or in public statements; military manuals; general declarations on law, including resolutions of international organizations; and, lastly, national or international court decisions.

Account needs to be taken of all forms of State practice, so as to permit all States — and not only those embroiled in armed conflict — to contribute to the formation of customary rules.

Basing customary law exclusively on actual conduct in armed conflicts would, moreover, be tantamount to accepting the current inhumane practices as law. Yet at the International Conference for the Protection of War Victims, States rejected such practices unanimously, as does public opinion.

The ICRC will entrust the factual material assembled to experts representing different geographical regions and different legal systems, asking them to draft reports on existing custom in various areas of interna-

tional humanitarian law where such an exercise would meet a priority humanitarian need. These reports will be discussed in 1997 at meetings of experts representing governments, National Societies and their Federation, and international, intergovernmental and non-governmental organizations. On the basis of the experts' reports and of the discussions, the ICRC will summarize the material in a report which, together with any recommendations, will be submitted to States and to the international bodies concerned before the holding of the subsequent International Conference of the Red Cross and Red Crescent.

## **2.6 The fundamental importance of treaty law**

Although the report to be prepared concerns customary law, the ICRC remains convinced of the need for universal participation in the treaties of international humanitarian law and of the necessity to continue the work of codifying this law. It is very difficult to base uniform application of the law, military instruction and the repression of breaches on custom, which by definition is in constant evolution, is still difficult to formulate and is subject to controversy. In the meantime, the report requested of the ICRC should go some way towards improving the protection of victims of armed conflicts.

## **3. Means of providing advisory services to States to support their efforts in the area of implementation of international humanitarian law and dissemination of its rules and principles**

### **3.1 Objectives of Advisory Services on international humanitarian law**

Recommendation III of the Intergovernmental Group of Experts for the Protection of War Victims proposes that:

*"the ICRC, with the assistance of National Societies, the International Federation of Red Cross and Red Crescent Societies ('the International Federation') and academic institutions, strengthen its capacity to provide advisory services to States, with their agreement, in their efforts to implement and disseminate IHL".*

The implementation of international humanitarian law covers very diverse areas, ranging from the need to take legislative measures (laws on the use of the emblem or the repression of war crimes) to other matters of a purely practical nature, such as promoting ways and means of teaching and spreading knowledge of the law.

The Advisory Services address all the measures that States should adopt in peacetime to implement humanitarian law, and is intended to support their efforts to incorporate this law into domestic law. The provisions of humanitarian law that call for the adoption of national measures have already been identified by the ICRC and communicated to States.<sup>2</sup> Some of them should be given priority in order to curb violations of humanitarian law, while others may be envisaged in the longer term. Nevertheless, we cannot limit ourselves to the measures regarded as having priority, as they all go hand in hand. Moreover, an assessment should be made of the needs of each country to ensure that the advisory services provided are tailored to the local context.

The Advisory Services can provide assistance in the following spheres of activity, among others:

- the introduction of instruction in international humanitarian law in official programmes (for the armed forces, etc.);
- the translation of the Geneva Conventions and their Additional Protocols into national languages;
- the incorporation, if necessary, of international humanitarian law into national law;
- the enactment of laws on the emblem and on the repression of war crimes;
- the appointment and training of legal advisers to the armed forces;
- the setting-up of National Information Bureaux.

### **3.2 Establishment of Advisory Services on international humanitarian law**

To comply with the request of the Group of Experts, the ICRC has already set up a unit entitled **Advisory Services on international humanitarian law**. This will underpin the approaches that the institution has been making for some years now to encourage and support States in their efforts with regard to implementation and dissemination of international humanitarian law.<sup>3</sup>

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<sup>2</sup> See, in particular, "National measures to implement international humanitarian law, Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986). Written representations by the ICRC", ICRC, Geneva, October 1991; "Implementation of international humanitarian law. National measures", ICRC, Doc. C.I/4.1/1.

<sup>3</sup> See note 2.

By intensifying its activities in this sphere, the ICRC hopes to help bring about greater respect for international humanitarian law and prevent breaches of its provisions. Indeed, it should be recalled that the incorporation of international treaty rules into domestic law not only constitutes a treaty obligation, but also has the twofold advantage of “nationalizing” international law provisions by attaching them specifically to domestic laws and structures, and of making it possible to apply sanctions in the event of non-compliance.

It should be noted here that the National Red Cross or Red Crescent Societies have an important advisory role to play in their respective countries, although this is not their main task. Some National Societies already act as advisers to their governments, their Parliaments, and even to their local authorities on measures for the implementation and dissemination of international humanitarian law.

The International Federation’s contribution in this regard consists in strengthening the capacity of its member Societies; this in turn will develop their ability to provide advisory services along with their other activities. It will mainly be a matter of drawing up long-term plans of work, recruiting and training staff and volunteers, and funding such activities.

### **3.3 Structure set up within the ICRC to provide advisory services**

The need to set up a new structure has been examined from several angles. The ICRC wants a unit that is as streamlined as possible, involves a minimum of bureaucracy and fits well into existing headquarters and field services. It has therefore opted for a separate unit at headquarters called **Advisory Services on international humanitarian law**. This new unit is attached to the Legal Division and will be backed up by advisers based in the field.

**At headquarters**, the unit has been operating since mid-1995. It comprises a head of Advisory Services, two lawyers — one trained in the continental and the other in the Anglo-Saxon legal systems — a documentation officer, and a secretary. Close links will be maintained with other ICRC services, in particular the Cooperation and Dissemination Division.

**In the field**, there will be one lawyer based in each of the various geographical regions.

This decentralized structure will be put in place as from early 1996. The lawyers will be selected on the basis of their competence in inter-

national and humanitarian law and of their familiarity with the region to be covered.

### **3.4 Cooperation with National Red Cross or Red Crescent Societies**

Recommendation III also suggests that *"States and National Societies indicate to the ICRC or, as appropriate, to the International Federation the specific needs they may have for such advisory services"*.

The ICRC is convinced that in this specific area of implementation of international humanitarian law it is essential to work in close cooperation with the National Red Cross or Red Crescent Societies and their International Federation. In particular, the ICRC is relying on National Societies to act as relays for the Advisory Services in their respective countries.

To this end, it is important for National Red Cross or Red Crescent Societies to be represented on national interministerial committees discussed in section 5 of this report. The National Societies very often play a very important role in the dissemination of humanitarian law in their own countries. They should therefore also be associated with the advisory process, in their capacity as national experts.

In view of its responsibilities in the area of development of National Societies, the Federation intends to pay close attention to wishes they express in regard to enhancing the advisory services they can provide to their governments, and will coordinate its efforts with those of the ICRC so as to avoid any duplication or any waste of available resources.

To ensure coherence within the Movement, the ICRC Advisory Services unit will remain in contact with the Federation and will rely as much as possible on the National Red Cross or Red Crescent Societies and on academic institutions competent in this sphere.

### **3.5 Information on advisory services provided**

Recommendation III finally proposes that *"the ICRC submit reports on its advisory services to the States party to the Geneva Conventions of 1949 and other interested bodies on an annual basis, and to the International Conference of the Red Cross and Red Crescent ..."*.

It goes without saying that the ICRC intends to keep the international community informed of the work it will undertake in this area. This will be done by including such information in its *Annual Report*, as well as by preparing ad hoc documents to be sent to States and made available

to interested bodies. These ad hoc documents will also enable the ICRC to evaluate the effectiveness of the Advisory Services unit, promote its activities and provide progress reports on its work. We hope that these documents, which the ICRC undertakes to prepare each year, will be a source of increased motivation for some States. The latter may then embark on their own projects and become associated with the enterprise. An account will also be given of the contributions made by the National Societies and their Federation to providing advisory services to States to support their efforts in the area of implementation of international humanitarian law and dissemination of its rules and principles.

The ICRC, in consultation with the International Federation, will also submit reports to the International Conferences of the Red Cross and Red Crescent on the advisory services provided.

Naturally, the ICRC does not intend to change its usual practice of reporting on field operations.

#### **4. Means of stepping up dissemination of international humanitarian law**

Recommendation IV of the Intergovernmental Group of Experts is of singular importance. Indeed, it is quite obvious that knowledge of international humanitarian law is a fundamental prerequisite for respecting it.

##### **4.1 Cooperation in dissemination**

The Intergovernmental Group of Experts recommends *“that the ICRC, in carrying out its mandate to disseminate international humanitarian law, work together, wherever possible, with other interested bodies including the International Federation, UN organs and specialized agencies, and regional organizations”*.

The ICRC is fully aware of the need for interested institutions to pool their efforts to make international humanitarian law better known.

To this end, the ICRC maintains close cooperation with the International Federation of Red Cross and Red Crescent Societies, one of whose tasks is to cooperate with the ICRC in this area, and with the National Red Cross or Red Crescent Societies in different countries. In recent years the ICRC, with the cooperation of interested National Societies, has held a large number of seminars designed to provide appropriate training for those called upon to give instruction in humanitarian law. In most cases,

these seminars were organized jointly by the ICRC and the International Federation when they were intended for leaders, senior staff or volunteers from National Societies. The Federation has also organized ad hoc seminars in this area; the National Societies have naturally held a far greater number of seminars, either for their own staff or for other target groups.

The ICRC wishes to establish closer cooperation in this connection with UNESCO, whose Executive Board adopted a resolution in 1994 urging its member States to step up their efforts in the area of dissemination. The first seminar organized jointly by the ICRC and UNESCO took place in Tashkent in September 1995.

For many years now, close links have been forged with the Organization of African Unity (OAU), which have enabled the organization of two high-level seminars on the teaching of humanitarian law to the armed forces.

The ICRC is ready to pursue cooperation in this regard with other regional organizations.

Finally, the ICRC believes that National Societies have a special responsibility as regards dissemination, both to make humanitarian law known to their staff and volunteers and to act as relays vis-à-vis the public and the circles most directly concerned: armed forces, universities, secondary schools, and so on. The ICRC attaches the greatest importance to the support of the National Societies in this area and wishes to strengthen further its cooperation with them and with the Federation.

#### **4.2 Military manuals**

The Intergovernmental Group of Experts recommends that "*the ICRC prepare, in cooperation with experts from various geographical regions, a model manual for armed forces on the law of international and non-international armed conflicts*".

Military manuals on the law of armed conflicts are without doubt particularly effective instruments of dissemination. They make it possible to reach all the members of a military force, since they are distributed by the hierarchy and thus have the blessing of the high command or the Ministry of Defence. Moreover, they state the rules of the law of armed conflicts in a language understood by those to whom they are addressed.

Nevertheless, many armies still do not have such manuals.

To encourage and facilitate the production of works of this type, the ICRC stands ready to draw up, together with experts from different regions of the world, a manual that could serve as a model.

This document will set out the treaty and customary rules relating to the conduct of hostilities, methods and means of combat, and persons and property protected under humanitarian law.

Convinced of the favourable impact that such a teaching aid would have on respect for humanitarian law and the protection of persons and property, the ICRC has already brought together a group of military experts to work out its content.

A study of military manuals in use around the world has made it possible to pinpoint training needs for each level and each special function in the military hierarchy.

The ICRC intends to pursue its consultations until completion of the model manual, which should be available in 1997. The ICRC believes that the drafting of this model manual could be a significant step forward in the harmonization of the efforts made by many States to meet their obligation to instruct their armed forces in the law of war, and will promote cooperation in this area among armed forces.

Naturally, such a universal reference manual will then have to be translated and adapted to the different national contexts, in both cultural and strategic terms.

#### **4.3 Dissemination of international humanitarian law among the civilian population**

The Intergovernmental Group of Experts recommends that States, where appropriate with the assistance of National Societies, “*should increase the civilian population’s awareness of international humanitarian law, thus contributing to the dissemination of a culture based on respect for the individual and human life ...*”. The experts further recommend that a special effort should be made to produce specific teaching materials “*designed to imbue students of all ages with the principles of IHL ...*”.

Members of regular armed forces are no longer the only ones to commit violent acts on today’s battlefields; indeed, every citizen — man, woman or adolescent — has become a potential combatant. Furthermore, civilians are protected under humanitarian law and therefore benefit from the rules the law lays down in their favour. It is clear that the attitude of the civilian population has an influence on the behaviour of armed forces, whether by inducing greater restraint and better observance of the rules or, on the contrary, by further inflaming passions and fuelling violence.

While instruction in humanitarian law remains a priority for the armed forces, it is just as important to familiarize the civilian population, and young people in particular, with the essential rules. Teachers have a special responsibility in this regard.

States should therefore include the teaching of the key provisions of international humanitarian law in national curricula.

Furthermore, the press, radio and television are ideal means of spreading knowledge of the basic rules of humanitarian law among the public at large.

As auxiliaries to the public authorities in the humanitarian field, National Red Cross or Red Crescent Societies should be in a position to provide effective support for these efforts at the national level. Some of them are already able to do so, while others still need to set up an appropriate structure for that purpose. Both the ICRC and the Federation intend to pursue their efforts, in their respective spheres of competence, to strengthen the capacity of the National Societies in the area of dissemination.

Lastly, the ICRC, the Federation and the National Societies have already prepared a considerable amount of teaching and audiovisual materials to this end, aimed in particular at the national and international media, including the new communication networks. They intend to continue and develop these endeavours within the limits of the means made available to them.

#### **4.4 Dissemination of the basic texts of humanitarian law in national languages**

The Intergovernmental Group of Experts recommends that “*the ICRC and States make efforts to provide technical assistance in order to ensure that basic documents of IHL are widely available in national languages*”.

Under the Geneva Conventions, it is up to States to translate these instruments into their national languages and to publicize them. The ICRC has only very limited experience in this regard.

It nonetheless stands ready to extend its efforts in this field, with the cooperation of the National Societies concerned, if adequate resources are made available.

#### **4.5 Expansion of dissemination activities**

Generally speaking, the ICRC, the International Federation and the National Red Cross or Red Crescent Societies are firmly convinced of the need to promote better knowledge of humanitarian law and are preparing

to step up their endeavours in this area, both to ensure improved application of humanitarian law and to propagate a culture of tolerance and respect for basic humanitarian values, which alone can help ease tensions and pave the way for a more peaceful future.

A new approach is indispensable. Indeed, it is not enough to spread knowledge of the rules enshrined in the Geneva Conventions and the other humanitarian law treaties; it is also necessary to demonstrate that those rules are the expression of human values that are deeply rooted in all cultures and all civilizations, as curbing violence is a goal common to every civilization.

Implanted as they are in their national communities, the National Red Cross or Red Crescent Societies are in a position to play a pivotal role in this regard.

For their part, the ICRC and the Federation intend to develop, each within its purview, the support that they can give to National Societies in the field of dissemination. The ICRC furthermore intends to intensify its own specific dissemination activities. Both the ICRC and the Federation have recently set up new structures corresponding to their responsibilities in this area.

## **5. Means whereby the establishment of national committees can encourage the implementation and dissemination of international humanitarian law**

### **5.1 Internal mechanisms for promoting and ensuring implementation of humanitarian law: national committees**

In addition to the recommendation made to the ICRC to step up its activities in terms of advisory services, the Intergovernmental Group of Experts for the Protection of War Victims, in Recommendation V, proposes that “*States be encouraged to create national committees, with the possible support of National Societies, to advise and assist governments in implementing and disseminating IHL*”.

From the beginning of its recent approaches made in regard to implementation of international humanitarian law, prompted by Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986), the ICRC has insisted on the establishment of national interministerial committees<sup>4</sup> in each State party to the Geneva Conventions.

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<sup>4</sup> See note 2.

These committees, which are responsible for coordinating the implementation of humanitarian law at the domestic level, should comprise representatives of the ministries involved in the application of humanitarian law. If possible, they should also include representatives of National Red Cross or Red Crescent Societies which, as stated above, could contribute their expertise. The task of these committees should be to evaluate national laws in relation to the obligations created by the treaties of international humanitarian law, and to make proposals designed to ensure effective application of the law.

It should be pointed out that some National Societies have been instrumental in the establishment of such committees, having taken the initiative of asking their governments to set them up. Moreover, several of them provide the secretariat for the committees.

## **5.2 Number of national committees established**

According to information received by the ICRC, a few such committees have already been set up. In some cases this is thanks to the sustained efforts of the National Red Cross or Red Crescent Societies, and of the ICRC in countries where it is present; in others the step has been taken in pursuance of ICRC recommendations for implementation of international humanitarian law.

The ICRC has been informed of the establishment of 17 national interministerial committees. The list of the countries concerned, together with an indication of each committee's composition and mandate, is appended to this chapter.

These data, which are not necessarily exhaustive, are based on information sent to the ICRC, which regularly receives reports on the work of some of these committees. As for the others, the ICRC has only learned of their existence, without having been able to follow their work or cooperate with them.

Moreover, a number of other commissions, committees or State agencies responsible for human rights issues very often deal with aspects of the promotion and implementation of the humanitarian law treaties, with or without the participation of National Red Cross or Red Crescent Societies, and also undertake important work in that domain. However, for lack of precise information in that regard, the ICRC is not in a position to publicize their existence.

According to reports received, the national committees differ widely in terms of mandates and composition. Some have been dealing or deal

in an ad hoc manner with the adoption of national implementation measures — legislative, regulatory or practical — while others have been engaged mainly in dissemination. Some are permanent, while others have been constituted for a fixed period.

The ICRC feels it is important for such committees to be permanent. Indeed, the arduous task of ensuring implementation of international humanitarian law at the national level cannot be accomplished by the mere adoption of a set of laws and regulations. After these measures have been taken, much remains to be done in the form of dissemination and teaching, as well as interpretation and monitoring application of the law. Here too, the committees can and should continue to play an important role. Experience shows that it is very often in countries where such committees have been set up that significant advances have been made in this crucial area.

### **5.3 Cooperation among national committees**

Recommendation V also proposes that *“States be encouraged to facilitate cooperation between national committees and the ICRC in their efforts to implement and disseminate IHL”*.

International cooperation should be established among the committees themselves, and between them and the ICRC.

Cooperation between national committees should take the form of regular exchanges and meetings both of their government representatives and of representatives of National Societies, and especially among committees in the same geographical region and in countries with similar legal systems.

To this end, periodic meetings should be organized to allow for the pooling of information on activities under way or planned. Exchanges of written communications and the sharing of the services of experts should also be encouraged.

The ICRC for its part intends to increase and develop its cooperation with the national committees, by providing advisory services in the following main areas: assessment of the legislation, administrative provisions and practices that are in force, under study or in draft form; legal assistance; and support for dissemination activities.

### **5.4 Meeting of experts from national committees**

In keeping with the foregoing and with the last recommendation of the Intergovernmental Group of Experts on this point, which proposes that

*"the ICRC organize a meeting of experts from States having already established national committees and from other interested States, and report on the meeting's conclusions to States interested in the establishment of such committees".*

The ICRC undertakes to organize, in the first half of 1996, a meeting of chairmen and experts of these committees, together with representatives of interested States.

In preparation for this first meeting, the ICRC Advisory Services unit will approach all States party to the Geneva Conventions to find out whether such committees exist and to gather as much information as possible on their programmes.

It goes without saying that the support of States and National Red Cross or Red Crescent Societies is indispensable to the success of this project. Relevant information as to the existence or the constitution of such committees and information on other entities with responsibility for promoting international humanitarian law on the national level should be assembled and communicated without delay. Considerable preparatory work will also be done to identify interests common to all these bodies and to establish priorities that will lead to proposals for practical action.

#### **List of National Committees**

- Albania:** A National Committee for the implementation of international humanitarian law was set up in March 1994. It comprises representatives of the Ministries of Foreign Affairs, Justice, Defence and Health, and of the Albanian Red Cross. It was established and continues to function thanks mainly to the sustained efforts of the National Society.
- Argentina:** A Committee for the implementation of international humanitarian law was set up on 16 June 1994 by decree 933/94. It is composed of representatives of the Ministries of Defence, the Interior, Foreign Relations and Justice, and its mandate is to conduct studies and propose measures for the implementation, teaching and dissemination of international humanitarian law.
- Australia:** In 1978, on the initiative of the National Society, a joint government/National Society Committee was set up and has been active mainly in the sphere of dissemination. This committee is composed of representatives of the National Society and of the Ministries of Defence, Foreign Affairs and Justice.
- Austria:** On 31 January 1989 the ICRC was informed that a Governmental Working Group had been set up in November 1988 and that the National Society was associated with it. Chaired by representatives of the Federal Chancellery, the group comprises representatives of the Ministries of Foreign Affairs, Defence and the Interior. Its mandate is to propose the necessary amendments to national laws with a view to implementation of humanitarian law.

- Belgium:** The Interdepartmental Humanitarian Law Committee, set up by a Cabinet decision on 20 February 1987 on the initiative of the Belgian Red Cross, is responsible for examining measures to be taken in Belgium for the implementation of international humanitarian law. The committee is composed of representatives of the Prime Minister, of the Ministers of Justice, the Budget, Foreign Affairs and National Defence, and of the Secretary of State for Public Health. The Belgian Red Cross takes part as an expert in the work of the committee and hosts its meetings.
- Bolivia:** The Permanent National Committee for the Implementation of Humanitarian Law was set up on 2 December 1992 by Decree No. 23.345. It comprises representatives of the Ministries of Foreign Affairs, National Defence, the Interior, Education, Social Defence and Public Health, and representatives of the Supreme Court, the Faculty of Law of the Universidad Mayor de San Andrés, and the Bolivian Red Cross. Its objectives are to monitor the application of humanitarian law, to study and propose measures necessary for the dissemination and implementation of its provisions, and to propose to the executive and legislative branches the adoption of the relevant internal rules or their amendment.
- Bulgaria:** The Bulgarian Red Cross has set up an Interministerial Committee responsible for the implementation of international humanitarian law. This committee comprises government and armed forces representatives, jurists, journalists and social workers, and its purpose is to work for the dissemination of humanitarian law.
- Chile:** A National Humanitarian Law Committee was established by Decree 654 in 1994. Its objectives are to study and propose to the authorities measures for the effective application of humanitarian law. The Director of Legal Affairs at the Ministry of Foreign Affairs chairs the committee, which also includes representatives of the Ministries of the Interior, Defence, Education, Justice and Health.
- Denmark:** On 16 July 1982 the government set up the Governmental Red Cross Committee, comprising representatives of the ministries concerned, the civilian and military authorities and the Danish Red Cross. The mandate of the committee is to identify needs with a view to the adoption of administrative measures to guarantee the application of humanitarian law and to coordinate the content and the implementation of such measures. The committee may also provide advice on the interpretation or application of the humanitarian rules.
- Finland:** An Interministerial Working Group has been set up to coordinate activities undertaken to meet obligations in regard to dissemination of humanitarian law. This group is made up of representatives of the Ministries of Foreign Affairs, the Interior, Education, Health and Defence, and of the Finnish Red Cross.
- Indonesia:** In 1980 the Ministry of Justice approved a decree establishing an interministerial committee, with which the National Society was associated, to study the question of ratification of the Additional Protocols of 1977. The mandate of this committee has been extended to include dissemination within law faculties and among journalists.
- Italy:** At the prompting of the Italian Red Cross, the Ministry of Foreign Affairs set up a Working Group in 1988 comprising representatives of the Ministries of Foreign Affairs, Defence and Justice, and of the National Society. Its mandate is to study means of making the necessary amendments to Italian legislation to include the penal sanctions, prohibitions, restrictions and duties provided for in humanitarian law.

- Norway:** By royal decree of 15 September 1989, the government established a National Committee comprising representatives of the ministries concerned with the application of humanitarian law, of the civilian and military authorities, and of the National Society. The committee's terms of reference were to study the need for national measures for the implementation of humanitarian law and to advise the authorities on its interpretation and application.
- Portugal:** The Portuguese government decided to set up a Committee responsible for identifying the amendments to be made to national legislation following the country's ratification of the Additional Protocols. The Portuguese Red Cross is a member of this committee, along with representatives of the Ministries of Foreign Affairs, Justice, Defence, Health and Internal Administration.
- Sweden:** A Special Council set up within the framework of the Ministry of Defence is responsible for the application of and developments in humanitarian law. Pursuant to Decree 1990/91:102 of 20 June 1991, this Council replaced the Advisory Committee on international humanitarian law, which essentially comprised representatives of the Ministry of Defence and of Health, of National Disaster Preparedness Committees, and of the Swedish Red Cross.
- Uruguay:** The National Humanitarian Law Committee was established by Decree No. 191/92. Its mandate was made permanent by Decree 677/992 of 24 November 1992 following the submission to the national authorities of a report on measures to be taken on the national level in regard to humanitarian law. This committee is made up of representatives of the Ministries of Foreign Relations, National Defence, the Interior, Health and Education, and representatives of the Supreme Court, the Faculty of Law and the Uruguayan Red Cross.
- Zimbabwe:** An Interministerial Committee on Human Rights and Humanitarian Law, set up in 1994, deals with issues relating to humanitarian law. It is chaired by a representative of the Ministry of Justice, and comprises representatives of the Ministries of Defence, Foreign Affairs, Home Affairs and Social Affairs, and of the Office of the President. The committee's task is to furnish opinions on the possible adoption of new treaties, to study implementation measures and to draft periodic reports.

## 6. Means of exchanging information on the implementation of international humanitarian law and on dissemination

Recommendation VI of the Intergovernmental Group of Experts proposes that:

*"in order to comply with their commitments in this regard under IHL instruments, States*

- *be invited by the Conference to provide to the ICRC any information which might be of assistance to other States in their efforts to disseminate and implement international humanitarian law;*

- *make every effort to participate in the fullest possible exchange of information on the measures that they have taken to implement their obligations under IHL instruments...*".

Information-sharing on national implementation and dissemination measures adopted by States is essential to ensure the coherence of systems of application of international humanitarian law.

The request that such information be shared is not new. Under the Geneva Conventions of 1949, States undertook to communicate to one another, through the depositary (the Swiss Federal Council) translations of these treaties into their respective national languages, as well as the laws and regulations adopted for their application. This provision was recalled in Resolution V of the 25th International Conference, which further requests that States communicate the same information to the ICRC to enable it to gather and assess such information and report accordingly to subsequent International Conferences.<sup>5</sup>

Regrettably, the fact is that very few States have lived up to this obligation in practice. Indeed, despite its efforts, the ICRC has received little information on what States have done at the national level.

To gather this information, the ICRC made a series of written representations to States and National Societies between 1988 and 1991. It has also fostered the exchange of information by organizing regional and national seminars. All the information gathered has been made available to States and National Red Cross or Red Crescent Societies and to other interested bodies.

Nevertheless, these initiatives will bear fruit only when States and National Societies make a greater effort to ensure a genuine sharing of information on implementation and dissemination of humanitarian law. The system of transmission of reports among States provided for in the humanitarian treaties should become the basis for a real exchange of information. Admittedly, the system suffers from the lack of an international monitoring body. This shortcoming can, however, be offset to a large extent by the activities of the ICRC in this area. But that would call for greater investment and commitment on the part of States and other parties responsible for the application of the law. This will be the ultimate test of the resolve of States to do their utmost to ensure greater respect for international humanitarian law.

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<sup>5</sup> See note 2.

Along the same lines, Recommendation VI also requests that *"in order to facilitate these measures, the ICRC*

- continue to participate actively in efforts to disseminate and implement IHL;*
- be encouraged to draw up guidelines, from time to time, for the purpose of enhancing the exchange of information;*
- collect, assemble and transmit the information provided to States and to the Conference."*

By setting up the Advisory Services on international humanitarian law, the ICRC also hopes to make this exchange of information a reality.

As indicated in section 3.5 of this document, the ICRC will report every year to States on the advisory services provided and will also inform the International Conferences. Information on this matter cannot be comprehensive unless the ICRC draws up a report on the national implementation measures taken by each State.

To do this, the ICRC has started to set up an **Advisory Services Documentation Centre**.

The Centre will be open to all States, National Societies and interested institutions. Its long-term aim is to make an inventory of all useful documentation on the implementation and dissemination of international humanitarian law: reference works, examples of laws and implementing regulations, translations of treaties into national languages, dissemination programmes for different target audiences, etc.

The Documentation Centre is still in its infancy, but to build it up and complete it the ICRC will be drawing up guidelines to encourage information-sharing and the systematic collection and compilation of data. These guidelines should also enable States and National Societies to identify the topics on which data are required, as such data are an indispensable adjunct to measures for the implementation of the international rules.

In addition to the information that will be gathered and compiled at ICRC headquarters, the institution will feed relevant data on implementation and dissemination into the database on international humanitarian law (DB-IHL), already available on CD-ROM.

This computerized tool made available by the ICRC to States and institutions concerned with international humanitarian law will be expanded by the addition of a new section dealing with implementation and dissemination. The ease of access to information offered by this new tool

will enhance the use of the data already available on international humanitarian law and facilitate further collection and transmission.

The ICRC hopes that these new approaches and initiatives will encourage States to do all they can at the national level to ensure respect for humanitarian law. The ICRC also wishes to contribute to the adoption of practical measures and to facilitate the sharing of information. Only by having as much data as possible and encouraging their exchange will the ICRC be able to carry out surveys and identify the areas where more work is called for. Lastly, these new tools will make it possible to increase cooperation among States and between States and the ICRC in this extremely important field.

## **7. Means of increasing respect for international humanitarian law**

Recommendation VII is of singular importance as it proposes specific steps designed to enhance respect for international humanitarian law.

This recommendation, however, is addressed to the States party to the Geneva Conventions. As the aim of the present document is to outline the follow-up which the Red Cross and Red Crescent institutions intend to give to the recommendations addressed to them, neither the ICRC nor the International Federation will take a position at this stage on the proposals made in this recommendation, but they invite the States party to the Geneva Conventions to examine it with all due attention.

A comment should nonetheless be made on the last paragraph of the recommendation: it invites the depositary of the Geneva Conventions to organize periodical meetings of the States party to consider general problems regarding the application of IHL. It is of course understood that these periodical meetings and future International Conferences of the Red Cross and Red Crescent must be properly coordinated, in particular as regards their frequency, their agenda and the follow-up given to their decisions. For one thing, the International Conference of the Red Cross and Red Crescent is the only apolitical forum in which all humanitarian issues can be examined in a broader context than that of the periodical meetings to be organized by the depositary; for another, only the International Conference of the Red Cross and Red Crescent provides an opportunity to discuss humanitarian matters of common interest to States and to the Red Cross and Red Crescent institutions with the participation of all the components of the Movement, including the National Red Cross and Red Crescent Societies.

## **8. Analysis of measures that could ensure universal respect for international humanitarian law**

Recommendation VIII of the Intergovernmental Group of Experts calls upon the ICRC to analyse measures which could ensure universal respect for international humanitarian law, particularly as it relates to civilians, women, children, refugees, and displaced persons. It also asks the ICRC to examine situations in which State structures have disintegrated as a result of non-international armed conflict and the extent to which the availability of weapons is contributing, on the one hand, to the proliferation of such conflicts and aggravation of violations of international humanitarian law, and, on the other, to the deterioration of the situation of civilians.

### **8.1 Full respect for international humanitarian law and the protection of civilians**

All rules governing armed conflict are based on the principle of distinction and protection of the civilian population and individual civilians in order to spare them as far as possible from the effects of war. This issue nonetheless remains a cause for concern, in particular when one thinks of the tragic fate often suffered by the civilian population of countries torn apart by internal conflict. Indeed, although civilians ought to be protected, they frequently become the main target of attack. In violation of the provisions of international humanitarian law, the parties to conflict resort to acts or threats whose primary purpose is to spread terror among the population. It is not rare to see civilians taking a temporary yet direct part in hostilities, either voluntarily or under duress. They thus lose the protection they are afforded under international law, and it becomes difficult or even impossible to distinguish between those taking part in the hostilities and those not doing so.

It is admittedly difficult for parties to a conflict to make such a distinction in certain situations, in particular during civil wars. Yet every person must be presumed to be a civilian; otherwise all protection for the civilian population would be lost. If the rules of international humanitarian law protecting civilians were respected, much suffering could be avoided. Moreover, especially vulnerable categories of people such as children, women, refugees and persons displaced by conflict could be spared if the specific rules protecting them were applied.

The effectiveness of the rules depends mainly on the good faith of the parties to conflict and their willingness to heed humanitarian imperatives.

The problem thus lies in the implementation of the law rather than in the adoption of new rules.

The work of the Intergovernmental Group of Experts nevertheless showed that the protection of victims of armed conflicts raised major problems which the experts were not able to study in sufficient detail. To make this task easier, the ICRC is ready to prepare a thorough study on the various matters identified by the experts.

## **8.2 “Unstructured” conflicts**

More and more frequently, non-international armed conflict leads to the disintegration of State structures. Often already weak before the outbreak of conflict, the administration no longer has any influence over events and cannot ensure respect for international humanitarian law or provide the minimum of supplies essential for the survival of the civilian population. This encourages the emergence of numerous non-State entities. During the conflict, many (often dozens or even more) armed groups take part in the hostilities.

Although such situations continue to be governed by humanitarian law, and in particular Article 3 common to the four Geneva Conventions, it is all too evident that the diverse warring groups do not feel bound by the law and are not capable of ensuring respect for its rules. Even humanitarian aid is then no longer feasible. Lack of willingness on the part of the belligerents, and the fact that humanitarian organizations cannot obtain the consent of all parties to the conflict, make it impossible to bring in the assistance necessary for the survival of a whole population. Somalia, Liberia, and Afghanistan are recent cases in point.

Trying to provide protection and assistance to the victims of these “unstructured” conflicts, in accordance with its mandate, is a major challenge for a humanitarian organization such as the ICRC. Although it is far from able to examine all the political, legal and social issues arising from these situations, the ICRC has the duty to seek all possible means of responding to humanitarian needs.

The ICRC will be organizing a meeting in 1996 on situations in which State structures have disintegrated as a result of non-international armed conflict. This meeting should help to find appropriate responses for the international community to preserve a minimum of humanity in these anarchic conflicts. The ICRC will present a report on the subject and will distribute it to all participants at the International Conference of the Red Cross and Red Crescent.

### **8.3 The availability of weapons and violations of international humanitarian law**

The current flow of weapons visibly aggravates conflict situations and leads to an increase in violations of international humanitarian law. This is notably the case when established structures disintegrate and clashes between organized forces degenerate into uncontrolled violence verging on banditry.

The availability of weapons is often considered to be a major source of tension in peacetime and the cause of higher numbers of casualties during conflicts.

The ICRC is concerned about this phenomenon. On the basis of its experience in conflicts, it will examine the link between the arms flow and violations of international humanitarian law, and will involve the National Societies and the International Federation in this process. It will then provide the participants at the International Conference of the Red Cross and Red Crescent with the results of the study, along with proposals for possible measures to counter the negative consequences of the transfer of weapons.

### **8.4 Voluntary contributions to support programmes for the dissemination and implementation of international humanitarian law**

Recommendation VIII of the Intergovernmental Group of Experts “invites the ICRC (...) to prepare, in collaboration with the International Federation, a draft recommendation for consideration by the Conference, encouraging voluntary contributions to support programmes for the dissemination and implementation of IHL, with particular emphasis on the protection of war victims”.

The experts asked in their recommendations that there be a significant increase in efforts to disseminate and implement international humanitarian law.

This responsibility is incumbent primarily on States, but such efforts will also entail new tasks for the different components of the International Red Cross and Red Crescent Movement, in accordance with their respective responsibilities under the Movement’s Statutes. As these tasks are described in detail above, they will not be repeated here.

To perform these tasks and to strengthen the dissemination component in their ongoing relief and development programmes, the ICRC, the International Federation and the National Red Cross and Red Crescent

Societies will need to have additional resources, in particular financial resources, at their disposal. The ICRC and the International Federation earnestly hope that donors, and especially the States party to the Geneva Conventions, will support these activities by making financial contributions to the specific dissemination programmes run by the ICRC and the Federation, and by responding to their special appeals in favour of relief and development operations.

Clearly, however, if they lack outside support many National Societies will be unable to make significant efforts to disseminate international humanitarian law, which is precisely what the experts recommend.

The ICRC and the International Federation share the opinion that, in making voluntary contributions as suggested by the experts, donors should give priority to dissemination programmes set up by National Societies that are in need of outside support. After studying the question in depth, the ICRC and the Federation have concluded that it is best to avoid creating a new administrative structure whose management would be an additional burden, and to ensure that the ICRC, the Federation and the National Societies do not appeal to the same donors for funds to finance the same or similar projects. Consequently, they have adopted the following solution.

Once a year, the ICRC and the Federation will jointly present a special appeal for funds for specific dissemination projects devised by the National Societies concerned, in agreement with either the ICRC or the Federation as the case may be. The special appeal will also mention the support provided by the ICRC and the Federation to the National Societies in this context. The ICRC will be responsible for the coordination of projects to be implemented in situations of armed conflict. In all other cases, the International Federation or the ICRC will coordinate projects relating to dissemination, in accordance with the statutory rules of the Movement.

Donors will be invited to pay their voluntary contributions either directly to the National Society concerned, or to the ICRC or the Federation, depending on the nature of the project or projects they wish to support. In accordance with their respective customary procedures, the ICRC, the International Federation and the National Societies will provide reports on how the funds contributed are used.

The ICRC and the International Federation are confident that this solution will help them to step up their dissemination efforts without

creating an additional administrative burden. In due time, they will be sending a special appeal relating to dissemination activities slated for 1996 to the States and National Societies concerned.

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# 10th Session of the General Assembly of the International Federation of Red Cross and Red Crescent Societies

*(Geneva, 27-30 November 1995)*

The 26th International Conference of the Red Cross and Red Crescent was preceded by the 10th Session of the General Assembly of the International Federation of Red Cross and Red Crescent Societies, which was held in Geneva from 27 to 30 November 1995 and attended by almost 600 delegates from 179 countries. That figure included both delegates from member National Societies and observers from emerging Societies.

In his opening address Mr Mario Villarroel Lander, President of the Federation, reviewed the state of the Federation and its activities since the previous session held in Birmingham and expressed his hopes for the future. With special reference to the Strategic Work Plan, he stressed that active and constant support from the National Societies was a matter of crucial importance.

## **Eight new members of the Federation**

The eight new National Societies recognized by the ICRC since the General Assembly held in Birmingham in 1993 were all admitted to the Federation. They were the Societies of Andorra, Equatorial Guinea, Turkmenistan, Uzbekistan, Armenia, Azerbaijan, Belarus and the Former Yugoslav Republic of Macedonia (Makedonski Crven Krst).

## **Report of the Secretary General of the Federation**

Mr George Weber gave an overview of the Federation's activities since the previous General Assembly, emphasizing in particular the wide variety of relief operations conducted by the Federation in extremely complex situations around the world, the large number of National So-

cieties (70 according to official reports) using the Strategic Work Plan as a frame of reference for planning and executing their programmes, and the growing attention being paid to the development aspect in emergency relief operations and to disaster preparedness among National Societies.

Mr Weber went on to outline the Federation's priorities for the coming years, placing emphasis on the need for a firmer commitment to established goals, in particular those intended to enable vulnerable people to avert, cope with and recover from disasters.

### **Strategic Work Plan**

Referring to Decision No. 35 taken by the General Assembly in Birmingham in 1993 on the updating and execution of the Strategic Work Plan for the Nineties (SWP),<sup>1</sup> the Assembly declared that the Plan would remain in force until the end of the decade. It urged all National Societies to develop or continue to implement their own SWPs, selecting activities outlined in the Federation's Plan and regularly sharing information on their implementation with the Secretary General so as to enable him to report on each and every Society's achievements to the 11th Session of the General Assembly in 1997; they should also ensure that adequate funds, coming from all national sources and preferably non-earmarked, were made available to the Secretariat for implementation of the Plan.

### **Report of the Development Commission**

After adopting the Commission's report, the Assembly approved the Red Cross and Red Crescent Development Policy, which focused on the need to strengthen the capacity of vulnerable communities in their daily lives. The Assembly also stressed the urgent need to increase the participation of women in all aspects of Red Cross and Red Crescent action and called for greater support by donor Societies for the Development Fund.

### **Report of the Health and Community Services Commission**

The Assembly approved the Commission's report deploring the widespread deterioration in the health and welfare of the most needy communities and expressing concern about the discrepancy between resources allocated for emergency relief and those devoted to long-term community

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<sup>1</sup> See *IRRC*, No. 297, November-December 1993, p. 506; and No. 301, July-August 1994 (special issue on "the Red Cross, the Red Crescent and vulnerable communities").

development; this imbalance was detrimental to the empowerment of vulnerable groups. In the context of that general decline in health and social service systems, Red Cross and Red Crescent action was becoming particularly important.

The Commission focused its attention on disease prevention and promoting health and social welfare, and recommended that National Societies should become actively involved in the development of programmes relating to the health of women and children, water and sanitation, communicable disease control, psychological support for disaster victims and first aid.

Lastly, the Assembly adopted a decision concerning Red Cross and Red Crescent work with migrants, which called upon National Societies to consider taking action in behalf of migrant populations within the framework of the SWP, which centred on assistance to the most vulnerable, and invited them to encourage migrants to participate in their activities as volunteers or employees, depending on the legal provisions in force in each country.

### **Report of the Youth Commission**

After hearing the Commission's report, which highlighted the development and implementation of youth policy and strategy in all the National Societies, the Assembly recommended that, in implementing the SWP, National Societies should give due importance to the following priorities concerning Red Cross and Red Crescent youth: the position, recruitment and management of youth volunteers; education and training; networking within the regions; health issues; minorities, the rights of the child and human rights; community action; the links between youth and adult groups within National Societies; and fundraising for youth activities.

Another decision was adopted urging National Societies to make financial contributions to the Fund so that it could rapidly become operational.

### **Report of the Disaster Relief Commission**

Since the previous General Assembly the Commission had looked at ways of improving disaster relief under five main headings: the changing nature of the United Nations system and its implications for the Federation; the growing needs of refugees and displaced people; problems arising from increasingly frequent technological disasters; the need for hu-

manitarian assistance organizations to be active in the field of advocacy; and the need to set high professional standards in humanitarian assistance operations.

The Commission stressed the importance of preserving independence and complying with the Fundamental Principles of the Red Cross and Red Crescent when working with United Nations agencies.

After adopting the Commission's report, the Assembly requested the Commission, in cooperation with the Secretary General, to draw up a global disaster relief policy to guide the Federation in its work, and to update the existing policy on the use of food aid and nutrition in emergency situations and incorporate it in the global policy.

### **Global revenue generation**

The Secretary General of the Federation introduced a document entitled "Policy framework for global revenue generation", a project aimed at maximizing revenue for the benefit of all National Societies and based on the idea of bringing companies together in pairs.

To that end *HelpAd Ltd*, a company set up by the Federation in London, was bringing together pairs of companies, one offering advertising space on its products and the other buying the space to advertise its own products, with the money going to the Red Cross and Red Crescent.

The proceeds would go 50:50 to Federation operations and National Societies in multinational deals, and 75:25 in favour of National Societies in national deals.

A trade launch had already been held in London and a full launch was planned for early 1996. Moreover, a foundation chaired by Mr George Weber had been set up in Geneva and would receive the proceeds from *HelpAd* operations, which were exempt from Swiss cantonal and federal taxes.

The Assembly adopted a decision approving the policy framework in principle and calling upon National Societies to support the *HelpAd* scheme and to conclude the necessary agreements with *HelpAd Ltd* for implementing it in their own countries when the occasion arose. It also encouraged National Societies to use the policy framework to increase revenue from traditional sources and discover new ones, and to redouble their efforts to collect funds not only for their own programmes but also for strengthening the international network of National Societies.

### **Plan and budget for 1996-1997**

The Assembly approved the Financial Reports for 1993 and 1994 and the plan and budget for 1996-1997, amounting to 52,971,000 and 55,734,000 Swiss francs respectively.

### **Relations with international organizations**

The Assembly expressed its satisfaction with the status of permanent observer to the United Nations General Assembly, won by the Federation thanks to the coordinated efforts of its entire membership. In endorsing the document entitled "Cooperation with international organizations", which would guide National Societies in their relations with such bodies, the Assembly noted that the activities of the Federation and National Societies in that respect should be governed first and foremost by the Fundamental Principles of the Red Cross and Red Crescent and by international humanitarian law.

In particular, the Assembly drew attention to the objectives which should guide the Federation and National Societies in their relations with international organizations, including the United Nations, its specialized agencies and special funds and programmes, namely:

- to serve the interests of the most vulnerable and to strengthen the role and capacity of the Federation and the National Societies to meet their humanitarian needs;
- to promote human dignity, the Fundamental Principles of the Red Cross and Red Crescent and humanitarian values;
- to protect the integrity and independence of action of the Red Cross and Red Crescent;
- to broaden and develop the capacity of the National Societies and of the Federation as a whole;
- to offer more effective and efficient humanitarian assistance through enhanced cooperation and communication.

Lastly, the Assembly requested the Secretary General to ensure that the Fundamental Principles of the Red Cross and Red Crescent, international humanitarian law and the Federation's opinions and activities were systematically given the highest possible profile within the United Nations system, intergovernmental bodies and other international forums. The Secretary General should also promote greater recognition among the international community for the Federation as a front-rank service pro-

vider and a credible defender of the most vulnerable, through cooperation and agreement among National Societies, the Secretariat and its delegations.

### **Amendments to the statutory texts**

The Assembly decided to postpone until the 11th Session of the General Assembly, due to be held in 1997, its consideration of amendments to the Constitution and corresponding articles of the Rules of Procedure.

### **Date and venue of the 11th Session of the General Assembly**

The Assembly accepted the invitation of the Spanish Red Cross to host its 11th Session in 1997.

*The Review*

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## Recognition of National Societies

The International Committee of the Red Cross has officially recognized the following National Societies:

*with effect from 24 August 1995*

Red Crescent Society of Turkmenistan

Red Crescent Society of Uzbekistan

*with effect from 1 November 1995*

Armenian Red Cross

Red Crescent Society of Azerbaijan

Red Cross of Belarus

Red Cross of the Former Yugoslav Republic of Macedonia  
(Makedonski crven krst)

These recognitions bring to **169** the number of National Societies that are members of the International Red Cross and Red Crescent Movement.

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### Follow-up to the International Conference for the Protection of War Victims (1993)

*Resolution 1 adopted by the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995) endorsed the recommendations drawn up by an intergovernmental group of experts charged with translating the Final Declaration of the International Conference for the Protection of War Victims (Geneva, August/September 1993) into proposals for "concrete and effective measures".<sup>1</sup> These recommendations are addressed primarily to the States party to the Geneva Conventions, including the depositary of those instruments. However, the ICRC, the International Federation of Red Cross and Red Crescent Societies and the National Red Cross and Red Crescent Societies are also urged to contribute to the effort of achieving better implementation of international humanitarian law, the main objective being to prevent violations from occurring.*

*The Review intends to inform its readers from time to time of such "concrete and effective measures" which have been or ought to be taken by all concerned, in particular those proposed by the ICRC. The Review would be especially pleased if it could also report on measures taken by States.*

*The first paper in this series relates to a proposal which had been drafted before the War Victims Conference set this process in motion in 1993. It is an attempt to strengthen respect for the natural environment in armed conflict.*

*The Review*

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<sup>1</sup> *IRRC*, No. 310, January-February 1996, pp. 58-60. For the text of the Final Declaration of the International Conference for the Protection of War Victims, see *IRRC*, No. 296, September-October 1993, pp. 377-381, and for the Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims see *IRRC*, No. 304, January-February 1995, pp. 33-38.

## Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict

In two previous issues of the *Review*, ICRC legal expert Antoine Bouvier reported on the work being done on the international level to strengthen the legal means of protecting the natural environment in times of armed conflict.<sup>2</sup> In his second article, after reporting on the results achieved in 1992 by the 47th session of the United Nations General Assembly, the author concluded that "existing law, if properly implemented and respected, provided adequate protection". Better implementation of existing international obligations is thus the main issue. In his opinion, "emphasis should henceforth be placed on seeking new mechanisms and putting the existing means into effect".<sup>3</sup>

Since 1993 further work has been done along the lines advocated by Bouvier, which, by the way, correspond to the position taken on various occasions by the ICRC. It is not our intention here to give a comprehensive account of the various steps taken to strengthen protection of the natural environment in armed conflict.<sup>4</sup> We merely propose to present and briefly discuss a practical proposal which the ICRC, after consultation with a group of international experts, submitted to the United Nations in 1994: the *Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict*. Without formally approving them, the UN General Assembly, at its 49th session, invited all States to "give due consideration to the possibility of incorporating [the Guidelines] into their military manuals and other instructions addressed to their military personnel".<sup>5</sup>

The Guidelines are intended as a tool to facilitate the instruction and training of armed forces in an often neglected area of international humanitarian law: the protection of the natural environment. They are

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<sup>2</sup> A. Bouvier, "Protection of the natural environment in time of armed conflict", *IRRC*, No. 285, November-December 1991, pp. 567-578, and "Recent studies on the protection of the environment in time of armed conflict", *IRRC*, No. 291, November-December 1992, pp. 554-566.

<sup>3</sup> "Recent studies ..." (note 2), p. 566.

<sup>4</sup> See A. Bouvier's articles (note 2) and the more recent account in H. P. Gasser, "For better protection of the natural environment in armed conflict: a proposal for action", 89 *American Journal of International Law*, 1995, pp. 637-644.

<sup>5</sup> GA res. 49/50, of 9 December 1994. The Guidelines have been published as an annex to UN Doc. A/49/323 (1994). See also H. P. Gasser (note 4).

nothing more and nothing less than a summary of the existing applicable international rules which must be known and respected by members of the armed forces. In other words, they are an instrument for dissemination purposes. The Guidelines drafted by the ICRC should not be seen as a blueprint for a new codification. Their sole aim is to contribute in a practical and effective way to raising awareness of a precious asset which merits respect and protection even — or especially — in time of armed conflict: the natural environment. It is now up to States and, in particular, the armed forces, to take appropriate action.

*Hans-Peter Gasser*

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## **GUIDELINES FOR MILITARY MANUALS AND INSTRUCTIONS ON THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT<sup>6</sup>**

### **I. PRELIMINARY REMARKS**

- (1) The present Guidelines are drawn from existing international legal obligations and from State practice concerning the protection of the environment against the effects of armed conflict. They have been compiled to promote an active interest in, and concern for, the protection of the environment within the armed forces of all States.
- (2) Domestic legislation and other measures taken at the national level are essential means of ensuring that international law protecting the environment in times of armed conflict is indeed put into practice.
- (3) To the extent that the Guidelines are the expression of international customary law or of treaty law binding a particular State, they must be included in military manuals and instructions on the laws of war. Where they reflect national policy, it is suggested that they be included in such documents.

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<sup>6</sup> UN Doc. A/49/323 (1994) and GA res. 49/50 (1994).

## II. GENERAL PRINCIPLES OF INTERNATIONAL LAW

- (4) In addition to the specific rules set out below, the general principles of international law applicable in armed conflict — such as the principle of distinction and the principle of proportionality — provide protection to the environment. In particular, only military objectives may be attacked and no methods or means of warfare which cause excessive damage shall be employed. Precautions shall be taken in military operations as required by international law.

G.P.I Arts. 35, 48, 52 and 57

- (5) International environmental agreements and relevant rules of customary law may continue to be applicable in times of armed conflict to the extent that they are not inconsistent with the applicable law of armed conflict.

Obligations concerning the protection of the environment that are binding on States not party to an armed conflict (e.g. neighbouring States) and that relate to areas beyond the limits of national jurisdiction (e.g. the high seas) are not affected by the existence of the armed conflict to the extent that those obligations are not inconsistent with the applicable law of armed conflict.

- (6) Parties to a non-international armed conflict are encouraged to apply the same rules that provide protection to the environment in international armed conflict and, accordingly, States are urged to incorporate such rules in their military manuals and instructions on the laws of war in a way that does not discriminate on the basis of how the conflict is characterized.
- (7) In cases not covered by international agreements, the environment remains under the protection and authority of the principles of international law derived from established custom, the principles of humanity and the dictates of public conscience.

H.IV preamble, G.P.I Art. 1.2, G.P.II preamble

## III. SPECIFIC RULES ON THE PROTECTION OF THE ENVIRONMENT

- (8) Destruction of the environment not justified by military necessity violates international humanitarian law. Under certain circumstances, such destruction is punishable as a grave breach of international humanitarian law.

H.IV.R Art. 23(g), G.C.IV Arts. 53 and 147, G.P.I Arts. 35.3 and 55

- (9) The general prohibition on destroying civilian objects, unless such destruction is justified by military necessity, also protects the environment.

H. IV. R Art. 23(g), G.C.IV Art. 53, G. P. I Art. 52, G. P. I I Art. 14

In particular, States should take all measures required by international law to avoid:

- (a) making forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives;

CW.P.III

- (b) attacks on objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas or drinking water installations, if carried out for the purpose of denying such objects to the civilian population;

G.P.I Art. 54, G.P.II Art. 14

- (c) attacks on works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, even where they are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population and as long as such works or installations are entitled to special protection under Protocol I additional to the Geneva Conventions;

G.P.I Art. 56, G.P.II Art. 15

- (d) attacks on historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.

H.CP, G.P.I Art. 53, G.P.II Art. 16

- (10) The indiscriminate laying of landmines is prohibited. The location of all pre-planned minefields must be recorded. Any unrecorded laying of remotely delivered non-self-neutralizing landmines is prohibited. Special rules limit the emplacement and use of naval mines.

G.P.I Arts. 51.4 and 51.5, CW.P.II Art. 3, H.VIII

- (11) Care shall be taken in warfare to protect and preserve the natural environment. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause wide-

spread, long-term and severe damage to the natural environment and thereby prejudice the health or survival of the population.

G.P.I Arts. 35.3 and 55

- (12) The military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State party is prohibited. The term “environmental modification techniques” refers to any technique for changing — through the deliberate manipulation of natural processes — the dynamics, composition or structure of the Earth, including its biota, lithosphere, hydrosphere and atmosphere, or of outer space.

ENMOD Arts. I and II

- (13) Attacks against the natural environment by way of reprisals are prohibited for States party to Protocol I additional to the Geneva Conventions.

G.P.I Art. 55.2

- (14) States are urged to enter into further agreements providing additional protection to the natural environment in times of armed conflict.

G.P.I Art. 56.6

- (15) Works or installations containing dangerous forces, and cultural property shall be clearly marked and identified, in accordance with applicable international rules. Parties to an armed conflict are encouraged to mark and identify also works or installations where hazardous activities are being carried out, as well as sites which are essential to human health or the environment.

e.g. G.P.I Art. 56.7, H.CP. Art. 6

#### IV. IMPLEMENTATION AND DISSEMINATION

- (16) States shall respect and ensure respect for the obligations under international law applicable in armed conflict, including the rules providing protection for the environment in times of armed conflict.

G.C.IV Art. 1, G.P.I Art. 1.1

- (17) States shall disseminate these rules, making them known as widely as possible in their respective countries, and include them in their programmes of military and civil instruction.

H.IV.R Art. 1, G.IV Art. 144, G.P.I Art. 83, G.P.II Art. 19

- (18) In the study, development, acquisition or adoption of a new weapon, means or method of warfare, States are under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by applicable rules of international law, including those providing protection to the environment in times of armed conflict.

G.P.I Art. 36

- (19) In the event of armed conflict, the parties thereto are encouraged to facilitate and protect the work of impartial organizations contributing to preventing or repairing damage to the environment, pursuant to special agreements between the parties concerned or, as the case may be, the permission granted by one of them. Such work should be performed with due regard to the security interests of the parties concerned.

e.g. G.C.IV Art. 63.2, G.P.I Arts. 61-67

- (20) In the event of breaches of rules of international humanitarian law protecting the environment, measures shall be taken to stop any such violation and to prevent further breaches. Military commanders are required to prevent and, where necessary, to suppress and to report to competent authorities breaches of these rules. In serious cases, offenders shall be brought to justice.

G.C.IV Arts. 146 and 147, G.P.I Arts. 86 and 87

### *Annex*

## SOURCES OF INTERNATIONAL OBLIGATIONS CONCERNING THE PROTECTION OF THE ENVIRONMENT IN TIMES OF ARMED CONFLICT

— General principles of law and customary international law

— International conventions

### *Main international treaties with rules on the protection of the environment in times of armed conflict:*

Hague Convention (IV) respecting the Laws and Customs of War on Land, of 1907 (H.IV), and Regulations Respecting the Laws and Customs of War on Land (H.IV.R)

Hague Convention (VIII) relative to the Laying of Automatic Submarine Contact Mines, of 1907 (H. VIII)

Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 1949 (G.C.IV)

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, of 1954 (H.CP)

Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, of 1976 (ENMOD)

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 1977 (G.P.I)

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 1977 (G.P.II)

(United Nations) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, of 1980 (CW), with:

- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices (CW.P.II)
  - Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (CW.P.III)
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## **Agreement between the International Criminal Tribunal for the former Yugoslavia and the ICRC on procedures for visiting persons held on the authority of the Tribunal**

*On 5 September 1995, three ICRC delegates, including a doctor and an interpreter, visited the only person being held at the time on the authority of the International Criminal Tribunal for the former Yugoslavia in The Hague.<sup>1</sup> Since then, another visit has taken place during which this detainee was seen again and two others were visited for the first time. The detainees are being held in a prison in the Netherlands, in a wing set aside for the Tribunal and specially converted to house people detained on its authority.*

*The purpose of the ICRC's visits is to examine conditions of detention, in accordance with the institution's customary procedures.*

*In an exchange of letters, the President of the International Criminal Tribunal for the former Yugoslavia, Mr Antonio Cassese, and the President of the International Committee of the Red Cross, Mr Cornelio Sommaruga, came to an agreement as to visiting procedures. The full text of the two letters appears below.*

*The Review*

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<sup>1</sup> International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, set up by resolution 827 (1993) of the United Nations Security Council.

**Letter from Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia, to Cornelio Sommaruga, President of the International Committee of the Red Cross, of 28 April 1995**

Dear President,

I have the honour to refer to resolution 827 (1993) of 25 May 1993 by which the Security Council established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the "Tribunal").

I also have the honour to refer to the Rules of Procedure and Evidence adopted by the Judges of the Tribunal in February 1994, as subsequently amended, and in particular to Rule 24(v) which provides that the Judges of the Tribunal shall determine or supervise the conditions of detention.

I further have the honour to refer to the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (the "Rules of Detention"). Rule 6 of the Rules of Detention provides for regular and unannounced inspections of the detention unit by qualified and experienced inspectors appointed by the Tribunal, to examine the manner in which detainees are treated.

With reference to these legal provisions and to our previous discussions, I propose that the International Committee of the Red Cross (the "ICRC"), being an independent and impartial humanitarian organization of long-standing experience in inspecting conditions of detention in all kinds of armed conflicts and internal strife throughout the world, undertake, in accordance with the modalities set out below, the inspection of conditions of detention and the treatment of persons awaiting trial or appeal before the Tribunal or otherwise detained on the authority of the Tribunal in the Penitentiary Complex or in the holding cells located at the premises of the Tribunal (the "Detention Unit").

1. The role of the ICRC shall be to inspect and report upon all aspects of conditions of detention, including the treatment of persons held at the Detention Unit, to ensure their compliance with internationally accepted standards of human rights or humanitarian law.

2. The Tribunal shall provide the ICRC with the following facilities to carry out its inspections:
  - a. full information on the operation and practice of the Detention Unit;
  - b. unlimited access to the Detention Unit including the right to move inside the Detention Unit without restriction; and
  - c. other information which is available to the Tribunal and necessary for the ICRC to carry out its inspections, in particular the notification of the detention of persons.
3. Each detainee may freely communicate with the ICRC. During an inspection of the Detention Unit, the detainee shall have the opportunity to talk to members of the ICRC delegation out of the sight and hearing of the staff of the Detention Unit.
4. The ICRC may communicate freely with any person whom it believes can supply relevant information.
5. The inspections shall take place on a periodic basis. The frequency with which visits will occur will be determined by the ICRC.
6. Inspections of the Detention Unit shall be unannounced. Copies of this Exchange of Letters and a specific written request to allow inspections without notice at any time will be provided by the Tribunal to the Dutch prison authorities and United Nations security personnel.
7. All costs associated with an inspection visit will be borne by the ICRC. The provision of inspections is to be considered a donation to the Tribunal by the ICRC.
8. After each visit, the ICRC shall draw up a confidential report on the facts found during the visit, taking account of any observations which may have been submitted by the Registrar or the President. The report, containing any recommendations which the ICRC considers necessary, shall be transmitted to the Tribunal.
9. The ICRC may, if it deems necessary, communicate its observations to the Commanding Officer (as defined in the Rules of Detention) and the Registrar of the Tribunal immediately after the visit. The Registrar shall immediately pass along any such communication to the President.

10. The information gathered by the ICRC in relating to an inspection visit and the ICRC's consultations with the Tribunal shall be confidential.
11. The Tribunal may, after securing the ICRC's agreement, have the report, together with the comments of the Tribunal, made public. In no event shall personal data relating to the detainees be published without the express written consent of the person concerned.
12. The Registrar of the Tribunal shall be the authority competent to receive communications from the ICRC. The Registrar shall inform the ICRC of the name of the liaison officer for the Detention Unit when such a person is appointed by the Tribunal.
13. The President of the ICRC shall be the authority competent to receive communications from the Tribunal.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an Agreement between the Tribunal and the ICRC on inspection of conditions of detention of persons held in the Detention Unit, with immediate effect.

Accept, Sir, the assurance of my highest consideration.

(signature)

**Letter from Cornelio Sommaruga, President of the International Committee of the Red Cross, to Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia, 5 May 1995**

Dear President,

I have to honour to refer to your letter of 28 April 1995 regarding visits of the International Committee of the Red Cross (the "ICRC") to detainees held under the authority of the International Criminal Tribunal for the former Yugoslavia ("the Tribunal").

It is indeed within the mandate of the ICRC to visit persons detained in relation to armed conflicts and internal strife. Therefore, the ICRC is ready to carry out visits to detainees held under the authority of the Tribunal in its Detention Unit in accordance with the

conditions outlined in your letter of 28 April 1995. Those conditions correspond to the traditional modalities under which the ICRC assesses the conditions of detention and the treatment of detainees, in particular by interviewing them in private, and makes the appropriate recommendations to the authorities concerned.

As you proposed, our respective letters shall constitute with immediate effect an agreement between the Tribunal and the ICRC on the inspection of the conditions of detention and treatment of persons held in the Detention Unit. I noted that the ICRC will be provided with the necessary facilities, including the notification of the detention of persons.

Our detention division will contact the Commanding Officer and the Registrar of the Tribunal to arrange details of the visits.

On behalf of the ICRC, I thank you for your support for the humanitarian activities of the ICRC.

Trusting in the success of the Tribunal's endeavour to play an essential role to improve respect for international humanitarian law, I remain,

Yours very respectfully,  
(signature)

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## **Peace Agreement for Bosnia and Herzegovina: provisions concerning the ICRC**

*The Peace Agreement for Bosnia and Herzegovina was concluded on 21 November 1995 in Dayton (United States) and signed in Paris on 14 December 1995 by the Presidents of the Republic of Bosnia and Herzegovina, the Federal Republic of Yugoslavia and the Republic of Croatia. The Agreement brought the hostilities on the territory of the former Yugoslavia to an end.*

*The Peace Agreement consists of the General Framework Agreement for Peace in Bosnia and Herzegovina and a number of annexes. This voluminous accord contains some articles which are directly relevant for the activities of the International Committee of the Red Cross in the former Yugoslavia. The text of these provisions is reproduced below.*

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### **Peace Agreement for Bosnia and Herzegovina<sup>1</sup>**

#### **Annex 1-A: Agreement on the Military Aspects of the Peace Settlement**

##### **Article IX: Prisoner Exchanges**

1. The Parties shall release and transfer without delay all combatants and civilians held in relation to the conflict (hereinafter “prisoners”), in conformity with international humanitarian law and the provisions of this Article.

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<sup>1</sup> Reproduced *in extenso* in: 35 I.L.M. 75 (1996).

- (a) The Parties shall be bound by and implement such plan for release and transfer of all prisoners as may be developed by the ICRC, after consultation with the Parties.
- (b) The Parties shall cooperate fully with the ICRC and facilitate its work in implementing and monitoring the plan for release and transfer of prisoners.
- (c) No later than thirty (30) days after the Transfer of Authority, the Parties shall release and transfer all prisoners held by them.
- (d) In order to expedite this process, no later than twenty-one (21) days after this Annex enters into force, the Parties shall draw up comprehensive lists of prisoners and shall provide such lists to the ICRC, to the other Parties, and to the Joint Military Commission and the High Representative. These lists shall identify prisoners by nationality, name, rank (if any) and any internment or military serial number, to the extent applicable.
- (e) The Parties shall ensure that the ICRC enjoys full and unimpeded access to all places where prisoners are kept and to all prisoners. The Parties shall permit the ICRC to privately interview each prisoner at least forty-eight (48) hours prior to his or her release for the purpose of implementing and monitoring the plan, including determination of the onward destination of each prisoner.
- (f) The Parties shall take no reprisals against any prisoner or his/her family in the event that a prisoner refuses to be transferred.
- (g) Notwithstanding the above provisions, each Party shall comply with any order or request of the International Tribunal for the Former Yugoslavia for the arrest, detention, surrender of or access to persons who would otherwise be released and transferred under this Article, but who are accused of violations within the jurisdiction of the Tribunal. Each Party must detain persons reasonably suspected of such violations for a period of time sufficient to permit appropriate consultation with Tribunal authorities.

2. In those cases where places of burial, whether individual or mass, are known as a matter of record, and graves are actually found to exist, each Party shall permit graves registration personnel of the other Parties

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to enter, within a mutually agreed period of time, for the limited purpose of proceeding to such graves, to recover and evacuate the bodies of deceased military and civilian personnel of that side, including deceased prisoners.

### ***Annex 7: Agreement on Refugees and Displaced Persons***

#### ***Article III, para. 2: Cooperation with International Organizations and International Monitoring***

2. The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic and non-governmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments. These activities shall include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.

#### ***Article V: Persons Unaccounted For***

The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.

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## MONGOLIA RATIFIES THE PROTOCOLS

Mongolia ratified on 6 December 1995 the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

The instrument of ratification contained the declaration provided for in Article 90 of Protocol I, together with the following reservation:

“In regard of Article 88, paragraph 2 of “The Additional Protocol to the Protection of Victims in the International Armed Conflicts (Protocol I) which states “The High Contracting Parties shall co-operate in the matter of extradition”, the Mongolian law which prohibits deprivation and extradition of its citizens from Mongolia shall be respected”.  
(Original language)

By a *note verbale* addressed on 26 February 1996 to the depositary, the government of Mongolia added the following clarification: The expression “deprivation” means “deprivation of one’s rights as a citizen of Mongolia”.

Pursuant to their provisions, the Protocols will come into force for Mongolia on 6 June 1996.

This ratification brings to **143** the number of States party to Protocol I and to **134** those party to Protocol II. Mongolia is the **47th** State to make the declaration regarding the International Fact-Finding Commission.

## **ACCESSION TO PROTOCOL II BY THE REPUBLIC OF CYPRUS**

The Republic of Cyprus acceded on 18 March 1996 to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977. Protocol II will come into force for the Republic of Cyprus on 18 September 1996.

This accession brings to **135** the number of States party to Protocol II. The Republic of Cyprus has been a party to Protocol I since 1 June 1979.

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### ***Corrigendum***

#### **The Kingdom of Swaziland and the Additional Protocols of 1977**

Contrary to the announcement in No. 309 of the *Review*, November-December 1995, p. 678, the Kingdom of Swaziland became party to the two Protocols by **accession** (and not by ratification).

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**GENEVA CONVENTIONS OF 12 AUGUST 1949**  
**AND**  
**ADDITIONAL PROTOCOLS OF 8 JUNE 1977**  
**RATIFICATIONS, ACCESSIONS AND SUCCESSIONS**  
**AS AT 31 DECEMBER 1995**

established by the Center for legal documentation of the ICRC

## **1. Abbreviations**

**R/A/S = *Ratification*:** a treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been endorsed by ratification. The time limits having elapsed, the Conventions and the Protocols are no longer open for signature. The States which have not signed them may at any time accede or, in the appropriate circumstances, succeed to them.

***Accession*:** instead of signing and then ratifying a treaty, a State may become party to it by the single act called accession.

***Succession* (declaration of):** a newly independent State may declare that it will abide by a treaty which was applicable to it prior to its independence. A State may also declare that it will provisionally abide by such treaties during the time it deems necessary to examine their texts carefully and to decide on accession or succession to some or all of the said treaties.

**R/D = *Reservation/Declaration*:** unilateral statement, however phrased or named, made by a State when ratifying, acceding or succeeding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (provided that such reservations are not incompatible with the object and purpose of the treaty).

D90 = **Declaration** provided for under Article 90 of Protocol I (prior acceptance of the competence of the International Fact-Finding Commission).

## 2. Dates

The dates indicated are those on which the Swiss Federal Department of Foreign Affairs received the official instrument from the State that was ratifying, acceding to or succeeding to the Conventions or Protocols or accepting the competence of the Commission provided for under Article 90 of Protocol I. They thus represent neither the date on which ratification, accession, succession or acceptance of the Commission was decided upon by the State concerned nor that on which the corresponding instrument was sent.

*N.B.: The dates given for succession to the Geneva Conventions by Congo, Jamaica, Madagascar, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone and Zaire used to be those on which the corresponding instruments had been officially adopted. They have now been replaced by the dates on which the depositary received those instruments.*

## 3. Entry into force

Except as mentioned in footnotes at the end of the tables, for all States the entry into force of the Conventions and of the Protocols occurs six months after the date given in the present document; for States which have made a declaration of succession, entry into force takes place retroactively, on the day of their accession to independence.

The 1949 Geneva Conventions entered into force on 21 October 1950.

The 1977 Protocols entered into force on 7 December 1978.

## 4. Names of countries

The names of countries given in the following list may differ from the official names of States.

## 5. Update since 31.12.94

### Ratifications, accessions or successions to the Geneva Conventions

Micronesia : 19.09.1995

**Ratifications, accessions or successions to Additional Protocol I**

Honduras	:	16.02.1995
Cape Verde	:	16.03.1995
Zambia	:	04.05.1995
Panama	:	18.09.1995
Micronesia	:	19.09.1995
Swaziland	:	02.11.1995
South Africa	:	21.11.1995
Mongolia	:	06.12.1995

**Ratifications, accessions or successions to Additional Protocol II**

Honduras	:	16.02.1995
Cape Verde	:	16.03.1995
Zambia	:	04.05.1995
Colombia	:	14.08.1995
Panama	:	18.09.1995
Micronesia	:	19.09.1995
Swaziland	:	02.11.1995
South Africa	:	21.11.1995
Mongolia	:	06.12.1995

**Declaration under Article 90**

Slovakia	:	13.03.1995
Cape Verde	:	16.03.1995
Czech Republic	:	02.05.1995
Romania	:	31.05.1995
Mongolia	:	06.12.1995

## 6. Ratifications, accessions and successions

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Afghanistan	26.09.1956	R					
Albania	27.05.1957	R X	16.07.1993	A		16.07.1993	A
Algeria	20.06.1960	A	16.08.1989	A X	16.08.1989	16.08.1989	A
Andorra	17.09.1993	A					
Angola	20.09.1984	A X	20.09.1984	A X			
Antigua and Barbuda	06.10.1986	S	06.10.1986	A		06.10.1986	A
Argentina	18.09.1956	R	26.11.1986	A X		26.11.1986	A X
Armenia	07.06.1993	A	07.06.1993	A		07.06.1993	A
Australia	14.10.1958	R X	21.06.1991	R X	23.09.1992	21.06.1991	R
Austria	27.08.1953	R	13.08.1982	R X	13.08.1982	13.08.1982	R X
Azerbaijan	01.06.1993	A					
Bahamas	11.07.1975	S	10.04.1980	A		10.04.1980	A
Bahrain	30.11.1971	A	30.10.1986	A		30.10.1986	A
Bangladesh	04.04.1972	S	08.09.1980	A		08.09.1980	A
Barbados	10.09.1968	S X	19.02.1990	A		19.02.1990	A
Belarus	03.08.1954	R X	23.10.1989	R	23.10.1989	23.10.1989	R
Belgium	03.09.1952	R	20.05.1986	R X	27.03.1987	20.05.1986	R
Belize	29.06.1984	A	29.06.1984	A		29.06.1984	A
Benin	14.12.1961	S	28.05.1986	A		28.05.1986	A
Bhutan	10.01.1991	A					
Bolivia	10.12.1976	R	08.12.1983	A	10.08.1992	08.12.1983	A
Bosnia and Herzegovina	31.12.1992	S	31.12.1992	S	31.12.1992	31.12.1992	S
Botswana	29.03.1968	A	23.05.1979	A		23.05.1979	A
Brazil	29.06.1957	R	05.05.1992	A	23.11.1993	05.05.1992	A
Brunei Darussalam	14.10.1991	A	14.10.1991	A		14.10.1991	A
Bulgaria	22.07.1954	R X	26.09.1989	R	09.05.1994	26.09.1989	R
Burkina Faso	07.11.1961	S	20.10.1987	R		20.10.1987	R
Burundi	27.12.1971	S	10.06.1993	A		10.06.1993	A
Cambodia	08.12.1958	A					
Cameroon	16.09.1963	S	16.03.1984	A		16.03.1984	A
Canada	14.05.1965	R	20.11.1990	R X	20.11.1990	20.11.1990	R X
Cape Verde	11.05.1984	A	16.03.1995	A	16.03.1995	16.03.1995	A
Central African Republic	01.08.1966	S	17.07.1984	A		17.07.1984	A
Chad	05.08.1970	A					
Chile	12.10.1950	R	24.04.1991	R	24.04.1991	24.04.1991	R
China	28.12.1956	R X	14.09.1983	A X		14.09.1983	A
Colombia	08.11.1961	R	01.09.1993	A		14.08.1995	A
Comoros	21.11.1985	A	21.11.1985	A		21.11.1985	A
Congo	04.02.1967	S	10.11.1983	A		10.11.1983	A
Costa Rica	15.10.1969	A	15.12.1983	A		15.12.1983	A
Côte d'Ivoire	28.12.1961	S	20.09.1989	R		20.09.1989	R
Croatia	11.05.1992	S	11.05.1992	S	11.05.1992	11.05.1992	S
Cuba	15.04.1954	R	25.11.1982	A			
Cyprus	23.05.1962	A	01.06.1979	R			
Czech Republic	05.02.1993	S X	05.02.1993	S	02.05.1995	05.02.1993	S
Denmark	27.06.1951	R	17.06.1982	R X	17.06.1982	17.06.1982	R

## INTERNATIONAL REVIEW OF THE RED CROSS

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Djibouti	06.03.1978 <sup>1</sup> S		08.04.1991 A			08.04.1991 A	
Dominica	28.09.1981 S						
Dominican Republic	22.01.1958 A		26.05.1994 A			26.05.1994 A	
Ecuador	11.08.1954 R		10.04.1979 R			10.04.1979 R	
Egypt	10.11.1952 R		09.10.1992 R	X		09.10.1992 R	X
El Salvador	17.06.1953 R		23.11.1978 R			23.11.1978 R	
Equatorial Guinea	24.07.1986 A		24.07.1986 A			24.07.1986 A	
Estonia	18.01.1993 A		18.01.1993 A			18.01.1993 A	
Ethiopia	02.10.1969 R		08.04.1994 A			08.04.1994 A	
Fiji	09.08.1971 S						
Finland	22.02.1955 R		07.08.1980 R	X	07.08.1980	07.08.1980 R	
France	28.06.1951 R					24.02.1984 <sup>1</sup> A	X
Gabon	26.02.1965 S		08.04.1980 A			08.04.1980 A	
Gambia	20.10.1966 S		12.01.1989 A			12.01.1989 A	
Georgia	14.09.1993 A		14.09.1993 A			14.09.1993 A	
Germany	03.09.1954 A	X	14.02.1991 R	X	14.02.1991	14.02.1991 R	X
Ghana	02.08.1958 A		28.02.1978 <sup>1</sup> R			28.02.1978 <sup>1</sup> R	
Greece	05.06.1956 R		31.03.1989 R			15.02.1993 A	
Grenada	13.04.1981 S						
Guatemala	14.05.1952 R		19.10.1987 R			19.10.1987 R	
Guinea	11.07.1984 A		11.07.1984 A		20.12.1993	11.07.1984 A	
Guinea-Bissau	21.02.1974 A	X	21.10.1986 A			21.10.1986 A	
Guyana	22.07.1968 S		18.01.1988 A			18.01.1988 A	
Haiti	11.04.1957 A						
Holy See	22.02.1951 R		21.11.1985 R	X		21.11.1985 R	X
Honduras	31.12.1965 A		16.02.1995 R			16.02.1995 R	
Hungary	03.08.1954 R	X	12.04.1989 R		23.09.1991	12.04.1989 R	
Iceland	10.08.1965 A		10.04.1987 R	X	10.04.1987	10.04.1987 R	
India	09.11.1950 R						
Indonesia	30.09.1958 A						
Iran (Islamic Rep. of)	20.02.1957 R	X					
Iraq	14.02.1956 A						
Ireland	27.09.1962 R						
Israel	06.07.1951 R	X					
Italy	17.12.1951 R		27.02.1986 R	X	27.02.1986	27.02.1986 R	
Jamaica	20.07.1964 S		29.07.1986 A			29.07.1986 A	
Japan	21.04.1953 A						
Jordan	29.05.1951 A		01.05.1979 R			01.05.1979 R	
Kazakhstan	05.05.1992 S		05.05.1992 S			05.05.1992 S	
Kenya	20.09.1966 A						
Kiribati	05.01.1989 S						
Korea (Dem. People's Rep. of)	27.08.1957 A	X	09.03.1988 A				
Korea (Republic of)	16.08.1966 <sup>1</sup> A	X	15.01.1982 R	X		15.01.1982 R	
Kuwait	02.09.1967 A	X	17.01.1985 A			17.01.1985 A	
Kyrgyzstan	18.09.1992 S		18.09.1992 S			18.09.1992 S	
Lao People's Dem.Rep.	29.10.1956 A		18.11.1980 R			18.11.1980 R	
Latvia	24.12.1991 A		24.12.1991 A			24.12.1991 A	
Lebanon	10.04.1951 R						

**GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOLS OF 1977**

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Lesotho	20.05.1968 S		20.05.1994 A			20.05.1994 A	
Liberia	29.03.1954 A		30.06.1988 A			30.06.1988 A	
Libyan Arab Jamahiriya	22.05.1956 A		07.06.1978 A			07.06.1978 A	
Liechtenstein	21.09.1950 R		10.08.1989 R	X	10.08.1989	10.08.1989 R	X
Luxembourg	01.07.1953 R		29.08.1989 R		12.05.1993	29.08.1989 R	
Madagascar	18.07.1963 S		08.05.1992 R		27.07.1993	08.05.1992 R	
Malawi	05.01.1968 A		07.10.1991 A			07.10.1991 A	
Malaysia	24.08.1962 A						
Maldives	18.06.1991 A		03.09.1991 A			03.09.1991 A	
Mali	24.05.1965 A		08.02.1989 A			08.02.1989 A	
Malta	22.08.1968 S		17.04.1989 A	X	17.04.1989	17.04.1989 A	X
Mauritania	30.10.1962 S		14.03.1980 A			14.03.1980 A	
Mauritius	18.08.1970 S		22.03.1982 A			22.03.1982 A	
Mexico	29.10.1952 R		10.03.1983 A				
Micronesia	19.09.1995 A		19.09.1995 A			19.09.1995 A	
Moldova (Republic of)	24.05.1993 A		24.05.1993 A			24.05.1993 A	
Monaco	05.07.1950 R						
Mongolia	20.12.1958 A		06.12.1995 R	X	06.12.1995	06.12.1995 R	
Morocco	26.07.1956 A						
Mozambique	14.03.1983 A		14.03.1983 A				
Myanmar	25.08.1992 A						
Namibia	22.08.1991 <sup>6</sup> S		17.06.1994 A		21.07.1994	17.06.1994 A	
Nepal	07.02.1964 A						
Netherlands	03.08.1954 R		26.06.1987 R	X	26.06.1987	26.06.1987 R	
New Zealand	02.05.1959 R	X	08.02.1988 R	X	08.02.1988	08.02.1988 R	
Nicaragua	17.12.1953 R						
Niger	21.04.1964 S		08.06.1979 R			08.06.1979 R	
Nigeria	20.06.1961 S		10.10.1988 A			10.10.1988 A	
Norway	03.08.1951 R		14.12.1981 R		14.12.1981	14.12.1981 R	
Oman	31.01.1974 A		29.03.1984 A	X		29.03.1984 A	X
Pakistan	12.06.1951 R	X					
Panama	10.02.1956 A		18.09.1995 R			18.09.1995 R	
Papua New Guinea	26.05.1976 S						
Paraguay	23.10.1961 R		30.11.1990 A			30.11.1990 A	
Peru	15.02.1956 R		14.07.1989 R			14.07.1989 R	
Philippines	06.10.1952 <sup>7</sup> R					11.12.1986 A	
Poland	26.11.1954 R	X	23.10.1991 R		02.10.1992	23.10.1991 R	
Portugal	14.03.1961 R	X	27.05.1992 R		01.07.1994	27.05.1992 R	
Qatar	15.10.1975 A		05.04.1988 A	X	24.09.1991		
Romania	01.06.1954 R	X	21.06.1990 R		31.05.1995	21.06.1990 R	
Russian Federation	10.05.1954 R	X	29.09.1989 R	X	29.09.1989	29.09.1989 R	X
Rwanda	05.05.1964 S		19.11.1984 A		08.07.1993	19.11.1984 A	
Saint Kitts and Nevis	14.02.1986 S		14.02.1986 A			14.02.1986 A	
Saint Lucia	18.09.1981 S		07.10.1982 A			07.10.1982 A	
Saint Vincent and the Grenadines	01.04.1981 A		08.04.1983 A			08.04.1983 A	
Samoa	23.08.1984 S		23.08.1984 A			23.08.1984 A	
San Marino	29.08.1953 A		05.04.1994 R			05.04.1994 R	
Sao Tome and Principe	21.05.1976 A						

INTERNATIONAL REVIEW OF THE RED CROSS

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Saudi Arabia	18.05.1963 A		21.08.1987 A	X			
Senegal	18.05.1963 S		07.05.1985 R			07.05.1985 R	
Seychelles	08.11.1984 A		08.11.1984 A		22.05.1992	08.11.1984 A	
Sierra Leone	10.06.1965 S		21.10.1986 A			21.10.1986 A	
Singapore	27.04.1973 A						
Slovakia	02.04.1993 S	X	02.04.1993 S		13.03.1995	02.04.1993 S	
Slovenia	26.03.1992 S		26.03.1992 S		26.03.1992	26.03.1992 S	
Solomon Islands	06.07.1981 S		19.09.1988 A			19.09.1988 A	
Somalia	12.07.1962 A						
South Africa	31.03.1952 A		21.11.1995 A			21.11.1995 A	
Spain	04.08.1952 R		21.04.1989 R	X	21.04.1989	21.04.1989 R	
Sri Lanka	28.02.1959 <sup>8</sup> R						
Sudan	23.09.1957 A						
Suriname	13.10.1976 S	X	16.12.1985 A			16.12.1985 A	
Swaziland	28.06.1973 A		02.11.1995 A			02.11.1995 A	
Sweden	28.12.1953 R		31.08.1979 R	X	31.08.1979	31.08.1979 R	
Switzerland	31.03.1950 <sup>9</sup> R		17.02.1982 R	X	17.02.1982	17.02.1982 R	
Syrian Arab Republic	02.11.1953 R		14.11.1983 A	X			
Tajikistan	13.01.1993 S		13.01.1993 S			13.01.1993 S	
Tanzania (United Rep. of)	12.12.1962 S		15.02.1983 A			15.02.1983 A	
Thailand	29.12.1954 A						
The Former Y.R. of Macedonia	01.09.1993 S		01.09.1993 S		01.09.1993	01.09.1993 S	
Togo	06.01.1962 S		21.06.1984 R		21.11.1991	21.06.1984 R	
Tonga	13.04.1978 S						
Trinidad and Tobago	24.09.1963 <sup>10</sup> A						
Tunisia	04.05.1957 A		09.08.1979 R			09.08.1979 R	
Turkey	10.02.1954 R						
Turkmenistan	10.04.1992 S		10.04.1992 S			10.04.1992 S	
Tuvalu	19.02.1981 S						
Uganda	18.05.1964 A		13.03.1991 A			13.03.1991 A	
Ukraine	03.08.1954 R	X	25.01.1990 R		25.01.1990	25.01.1990 R	
United Arab Emirates	10.05.1972 A		09.03.1983 A	X	06.03.1992	09.03.1983 A	X
United Kingdom	23.09.1957 R	X					
United States of America	02.08.1955 R	X					
Uruguay	05.03.1969 R	X	13.12.1985 A		17.07.1990	13.12.1985 A	
Uzbekistan	08.10.1993 A		08.10.1993 A			08.10.1993 A	
Vanuatu	27.10.1982 A		28.02.1985 A			28.02.1985 A	
Venezuela	13.02.1956 R						
Viet Nam	28.06.1957 A	X	19.10.1981 R				
Yemen	16.07.1970 A	X	17.04.1990 R			17.04.1990 R	
Yugoslavia	21.04.1950 R	X	11.06.1979 R	X		11.06.1979 R	
Zaire	24.02.1961 S		03.06.1982 A				
Zambia	19.10.1966 A		04.05.1995 A			04.05.1995 A	
Zimbabwe	07.03.1983 A		19.10.1992 A			19.10.1992 A	

<sup>1</sup> Djibouti's declaration of succession in respect of the First Convention was dated 26.01.78.

- <sup>2</sup> On accession to Protocol II, France made a communication concerning Protocol I.
- <sup>3</sup> Entry into force on 07.12.78.
- <sup>4</sup> Entry into force on 07.12.78.
- <sup>5</sup> Entered into force on 23.09.66, the Republic of Korea having invoked Arts. 62/61/141/157 common respectively to the First, Second, Third and Fourth Conventions (immediate effect).
- <sup>6</sup> An instrument of accession to the Geneva Conventions and their Additional Protocols was deposited by the United Nations Council for Namibia on 18.10.83. In an instrument deposited on 22.08.91, Namibia declared its succession to the Geneva Conventions, which were previously applicable pursuant to South Africa's accession on 31.03.52.
- <sup>7</sup> The First Geneva Convention was ratified on 7.03.1951.
- <sup>8</sup> Accession to the Fourth Geneva Convention on 23 February 1959 (Ceylon had signed only the First, Second, and Third Conventions).
- <sup>9</sup> Entry into force on 21.10.50.
- <sup>10</sup> Accession to the First Geneva Convention on 17.03.1963.

### ***Palestine***

On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto".

On 13 September 1989, the Swiss Federal Council informed States that it was not in a position to decide whether the letter constituted an instrument of accession, "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine".

### ***Lithuania***

Party to the 1929 Geneva Conventions (sick and wounded, prisoners of war).

## **7. Totals**

<b>Number of States party to the Geneva Conventions of 1949</b>	<b>: 186</b>
<b>Number of States party to Additional Protocol I</b>	<b>: 143</b>
<b>Number of States having made the declaration under Article 90</b>	<b>: 47</b>
<b>Number of States party to Additional Protocol II</b>	<b>: 134</b>
<b>Number of States members of the United Nations</b>	<b>: 185</b>

States members of the UN or parties to the Statute of the International Court of Justice, not being party to the 1949 Geneva Conventions: Eritrea, Lithuania, Marshall, Nauru, Palau.

## 8. Chronological list of States having made the declaration provided for under Article 90 of Protocol I

1	Sweden	:	31.08.1979
2	Finland	:	07.08.1980
3	Norway	:	14.12.1981
4	Switzerland	:	17.02.1982
5	Denmark	:	17.06.1982
6	Austria	:	13.08.1982
7	Italy	:	27.02.1986
8	Belgium	:	27.03.1987
9	Iceland	:	10.04.1987
10	Netherlands	:	26.06.1987
11	New Zealand	:	08.02.1988
12	Malta	:	17.04.1989
13	Spain	:	21.04.1989
14	Liechtenstein	:	10.08.1989
15	Algeria	:	16.08.1989
16	Russian Federation	:	29.09.1989
17	Belarus	:	23.10.1989
18	Ukraine	:	25.01.1990
19	Uruguay	:	17.07.1990
20	Canada	:	20.11.1990
21	Germany	:	14.02.1991
22	Chile	:	24.04.1991
23	Hungary	:	23.09.1991
24	Qatar	:	24.09.1991
25	Togo	:	21.11.1991
26	United Arab Emirates	:	06.03.1992
27	Slovenia	:	26.03.1992
28	Croatia	:	11.05.1992
29	Seychelles	:	22.05.1992
30	Bolivia	:	10.08.1992
31	Australia	:	23.09.1992
32	Poland	:	02.10.1992
33	Bosnia and Herzegovina	:	31.12.1992
34	Luxembourg	:	12.05.1993
35	Rwanda	:	08.07.1993
36	Madagascar	:	27.07.1993
37	The Former Y.R. Macedonia	:	01.09.1993
38	Brazil	:	23.11.1993
39	Guinea	:	20.12.1993

GENEVA CONVENTIONS OF 1949 AND ADDITIONAL PROTOCOLS OF 1977

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40	Bulgaria	:	09.05.1994
41	Portugal	:	01.07.1994
42	Namibia	:	21.07.1994
43	Slovakia	:	13.03.1995
44	Cape Verde	:	16.03.1995
45	Czech Republic	:	02.05.1995
46	Romania	:	31.05.1995
47	Mongolia	:	06.12.1995

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## **Books and Reviews**

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Manfred Botzenhart, *Französische Kriegsgefangene in Deutschland 1870-1871*, Sonderdruck aus Francia, Forschungen zur Westeuropäischen Geschichte, published by the German Historical Institute, Paris, vol. 21/3, 1994, Jan Thorbecke Verlag, Sigmaringen

Professor Botzenhart reminds us that some 400,000 French prisoners were taken off to Germany during the war of 1870/71. Germany was not prepared to receive such a sudden large influx of prisoners and at first had great difficulty in housing these men and providing for their subsistence. The prisoners were scattered among some 200 places of detention, first in disused fortresses and military buildings and later in barracks specially built for them. Despite the lamentable condition of the prisoners on their arrival, German military doctors gradually managed to reduce the mortality rate, and according to the observers — mostly Swiss and French — who were able to visit the prisoners, their conditions of detention were acceptable.

Referring mainly to sources that he found in the ICRC archives, the author describes the activities of the various organizations which tried to bring assistance to the prisoners, in particular those of the "*International Relief Agency for Wounded Soldiers*", set up by the ICRC in Basel and using the red cross emblem, and of the "*International Relief Committee for Prisoners of War*", also established in Basel by the ICRC and using the emblem of the green cross. The existence of these two parallel organizations is explained by the fact that the ICRC had received many appeals on behalf of prisoners of war, but had considered that the red cross emblem, to which the Geneva Convention of 1864 attributed a specific legal meaning, could not cover assistance to able-bodied prisoners; the International Relief Committee for Prisoners of War was therefore set up as a new body formally separate from the Agency and was placed under the green cross emblem. Among this Committee's tasks were the collection and delivery of relief supplies to the prisoners, publication of lists of the captives and tracing of missing soldiers; it corresponded regularly with the commanders of camps and fortresses and had a roster of delegates who could be sent to the field.

Professor Botzenhart also describes the ICRC's efforts to organize the repatriation of seriously wounded prisoners of war to France via Switzerland. Under a special Convention of 11 March 1871, the repatriation of prisoners began as soon as the preliminary peace agreements were concluded, and by mid-July of that year nearly all the prisoners had returned to France.

*Françoise Perret*  
ICRC Research Officer

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Victor Monnier, *William E. Rappard. Défenseur des libertés, serviteur de son pays et de la Communauté internationale*, Published by Slatkine, Geneva, Helbing and Lichtenhahn, Basel, and Champion, Paris, 1995, 900 pages.

This work, prepared under the guidance of Professor Giovanni Busino and with a preface by Professor Olivier Reverdin, is a very detailed and vividly written biography of William E. Rappard. After describing Rappard's New York childhood in his family of Swiss origin and his studies in Geneva, Berlin, Munich, Harvard, Paris and Vienna, Victor Monnier tells us of his appointment to the chair of economic history at the University of Geneva in September 1913, on the eve of the First World War.

The author goes on to relate how William E. Rappard took part in a mission of five delegates sent to the United States by the Swiss government from August to November 1917 in order to give the Americans a better knowledge and understanding of Switzerland and to explain to them the extremely difficult situation in which the war had placed it, particularly from the economic point of view. During this mission, Rappard was granted a personal interview with President Wilson, who told him about his plan to promote the creation of a League of Nations with a view to establishing a new international order. As a result of this mission, the United States and Switzerland concluded an agreement on 5 December 1917 which included the provision of supplies for Switzerland.

In October 1918, Rappard returned to the United States to sound out President Wilson's attitude towards the role of Switzerland and other neutral countries in the future League of Nations. On meeting the President for the second time, Rappard realized that he was not in favour of admitting neutral countries to the League, but nevertheless tried to persuade him to accept all the neutrals, as well as Germany — when the latter adopted a democratic system. After his return to Switzerland at the end of December, William Rappard took part in Swiss overtures to join the League of Nations, in the course of which he became more closely acquainted with the Legal Adviser to the Swiss Political Department (Ministry of Foreign Affairs), Max Huber — who was to become President of the International Committee of the Red Cross in 1928. The two men thereafter held each other in great mutual esteem.

In January 1919, the Swiss government sent Rappard to the Peace Conference in Paris in order to “put out feelers” to the Allied delegates, particularly those of the United States, with regard to cooperation by Switzerland in establishing the League of Nations. In Paris Rappard again met President Wilson, who then stated that he was in favour of locating the League's headquarters in Geneva.

In the ensuing months, Rappard continued his efforts to enable Switzerland to join the League of Nations while retaining its neutrality, and also took part in a commission dealing with international labour legislation. On 28 June 1919, the Allies and the German plenipotentiaries signed the Treaty of Versailles, Article 435 of which provided that the signatories of the Treaty “*recognise the guarantees stipulated by the Treaties of 1815... in favour of Switzerland*”, in other words, its neutrality.

It was this Article 435, the adoption of which had been negotiated by Federal Councillor Gustave Ador — who was also President of the International Committee of the Red Cross, from 1910 to 1928 — that subsequently enabled Switzerland to join the League of Nations while retaining its neutral status.

The next chapter is devoted to the services that William E. Rappard rendered to the international community. Victor Monnier here describes how Rappard came into contact with the Red Cross by working, from July to October 1915, at the International Prisoners-of-War Agency established in August 1914 by the International Committee of the Red Cross (ICRC). Two years later, in July 1917, Rappard became a member of that Committee.

During his missions in the United States in 1917 and 1918, Rappard established contacts with representatives of the American Red Cross, particularly with the President of its War Council, Harry P. Davison, whose proposal to set up a federation of National Red Cross Societies aroused his enthusiasm. In early February 1919, Davison convened a meeting in Cannes of the Red Cross Societies of the five Allied Powers — the United States, Great Britain, France, Italy and Japan — whose delegates drafted a joint plan of action for peacetime and went to Geneva to discuss their project with the ICRC. On 21 February 1919, in Paris, Davison gave representatives of governments and of the international press an account of his plan for setting up a League of Red Cross Societies, which was officially constituted on 5 May 1919 by the National Societies of the five Allied countries. Davison was elected President of the League and Rappard became its Secretary General.

In 1920, Rappard was appointed Director of the Mandates Section of the League of Nations, a post he held until 1924. At the same time he left his post at the League of Red Cross Societies, but remained a member of the ICRC, from which he finally resigned on 17 March 1921, mainly because of differences of opinion with his colleagues in that body concerning the division of tasks between the League of Red Cross Societies and the ICRC.

The Mandates Section provided the secretariat for the League of Nations Permanent Mandates Commission responsible for supervising the trusteeship exercised by the victorious States — the mandatory powers — over the former German colonies and the territories detached from the Ottoman Empire, namely Syria and Lebanon, which were administered by France, and Palestine, Transjordan and Iraq, which were administered by Great Britain. One of the tasks of the Mandates Section was therefore to analyse the reports regularly submitted by the Mandatory Powers.

On being appointed Rector of Geneva University, William Rappard became convinced that the presence of international organizations in the city should be conducive to the study of international matters. This idea was shared by several Geneva professors and politicians and was finally put into practice by the establishment of the Graduate Institute of International Studies, of which Rappard was appointed Director in October 1928. He nevertheless continued to take an interest in the work of the League of Nations, and in 1928 the Federal Council asked him to be a member of the Swiss delegation to the League; he subsequently combined this assignment with his work for the Mandates Commission.

In the 1930s, Rappard denounced the political systems of the USSR, Italy and Germany with equal vigour.

Throughout the war, Rappard pursued his activities at Geneva University and at the Graduate Institute of International Studies and took an active part in the work of the *Comité international pour le placement des intellectuels réfugiés* (International Committee for the Placing of Refugee Intellectuals) set up in Geneva in 1933. He also undertook several missions for the Swiss government. After the war, Rappard negotiated the return of the International Labour Office to Geneva, and the Swiss government entrusted him with yet another mission to the Government of the United States, this time with a view to restoring mutual trust between the two countries. In later years he represented Switzerland at several international conferences on the European economic situation and also at the sessions of the International Labour Conference held in San Francisco in June 1948 and in Geneva in 1949 and 1950.

During the final years of his life, Rappard continued his university career and published studies on the economic and political situation of the time, marked by the Cold War between the United States and the USSR. He also took an interest in the founding of the State of Israel, which he visited in 1949. He died on 29 April 1958.

This 900-page biography by Victor Monnier, based on extensive research in a wide variety of sources, will serve as an authoritative reference work on the life, personality and achievements of William E. Rappard.

*Françoise Perret*  
ICRC Research Officer

## **Miscellaneous**

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*May 1996: the ICRC opens a new Web site,  
this time in French*

### **The ICRC on Internet**

A large number of international and non-governmental organizations supply the public with information on the Internet *World Wide Web* network, and the International Red Cross and Red Crescent Movement is no exception. It is ever more widely represented on this network, with the International Committee of the Red Cross (ICRC), about fifteen National Red Cross and Red Crescent Societies to date and their International Federation, as well as the International Red Cross and Red Crescent Museum and the Henry Dunant Institute.

The ICRC decided early in 1995 to make this new medium an integral part of its communication policy and opened a site on 1 September of that year, a few months before the opening of the 26th International Conference of the Red Cross and Red Crescent.

#### **The objectives**

The objectives of a Web site are the same as those of conventional communication media, namely to bring about a better understanding of the humanitarian problems associated with conflict situations and of the role, mandate and activities of the various components of the Movement, particularly the ICRC; to promote knowledge of and respect for international humanitarian law; and to foster a humanitarian attitude in situations of tension and conflict.

The ICRC's principal contacts are States, the National Societies and their Federation, the media and military, medical and academic circles. The Internet network is one means of reaching these different audiences, many of them already familiar with new technologies, and can also be used to enter into contact with people who have hitherto been left outside the scope of the ICRC's communication efforts.

For example, in the large-scale campaign that the ICRC is now conducting against the use of anti-personnel mines, Internet is one of the means of reaching public opinion worldwide.

The speed with which information can be sent is another great advantage. During the 26th International Conference of the Red Cross and Red Crescent, in December 1995, the various documents produced during the proceedings (press releases, speeches, daily bulletins, etc.) were available a few hours after their publication.

This new means of communication helps to increase the impact of the message, since the information is circulated quickly and widely and the user is given a coherent set of data, as well as an opportunity to respond via e-mail.

### **Contents of the site**

On its Web site, the ICRC circulates the most recent information through its press releases and its weekly "ICRC News" bulletin. The site also enables users to find out what the ICRC is, how it works and what it does, by type of activity (relief, health-related activities, visits to detainees, restoration of family links, dissemination of international humanitarian law, etc.) and by country or region. It can be consulted for the full text of the Geneva Conventions and their Additional Protocols and for a list of the States party to those treaties. Several subjects of particular concern to the ICRC are described there, such as *blinding weapons, water and war, women and war* and, above all, the issue of *anti-personnel mines*. Much space is devoted to the Movement, and links have been established with sites developed by some of its members.

The documents made available are press releases, public reports, brochures, articles and other publications, especially all the articles that have appeared in the *International Review of the Red Cross* since 1995 in English and since 1996 in French. Most of the documents and their illustrations, such as maps, graphics and photos, are accessible in full. The various items presented (publications, CD-ROMs, photos, video clips, etc.) can be ordered directly from the site.

A link has been established with the server of the BBC (*British Broadcasting Corporation*), which publishes lists of persons reported missing in the former Yugoslavia: this is the Radio Link service, set up in cooperation with the ICRC.

## **Languages**

The ICRC server was first designed in English, except for the section covering the "26th International Conference of the Red Cross and Red Crescent", which was prepared in three languages — English, French and Spanish.

The French version of the server which the ICRC will launch in May 1996 will be a mirror image of the English version, except for several documents which have not been translated. It is proposed to add a simplified Spanish version containing the "News" and several basic texts later in the year.

## **Promotion of the server**

Promotion plays an essential part in launching a new Web site, and subsequently becomes a continuous task.

When the ICRC site was opened, an announcement was sent not only to the above-mentioned audiences, but also to the Web's main directories, indexes and browsers.

These browsers enable network users who are unaware of the existence of the ICRC server to come across it "by chance": while looking for "refugee", "mine" or "Rwanda", you obtain a series of replies from different servers, including that of the ICRC.

The address of this server henceforth appears together with the postal address and fax number on all ICRC publications and, where possible, on staff members' visiting cards.

The ICRC has also asked other organizations present on Internet to set up links with its site. Similar approaches have been made to international law and medical faculties, the media, libraries and international and non-governmental organizations. About a hundred links have been indexed to date.

## **The users**

Consultation of the ICRC server is currently increasing at the rate of about 10% a month, and some 160,000 cases of access were recorded in February 1996. The users mainly come from the Anglo-Saxon world and Switzerland, but also from the four corners of the earth — Spain, Croatia, Israel, South Africa, Mexico and the Republic of Korea, to cite only a few examples.

A “visitors’ book” has been opened to receive comments and to get a better idea of who the users are: these people come mostly but not exclusively from circles customarily in contact with the ICRC. It is unfortunately difficult to obtain accurate information about the users, since many do not leave any indication who they are.

### **Prospective developments**

It is proposed to make the following accessible on Internet:

- data on persons missing in connection with the conflict in the former Yugoslavia;
- some 80 texts of instruments of international humanitarian law (IHL), also available on a CD-ROM produced by the ICRC;
- data on national measures for the implementation of IHL, collected by the ICRC Advisory Service;
- the catalogue of the ICRC library, which contains a large collection of works on IHL and the Red Cross.

The addition of animated sequences and sound tracks will gradually make the site more attractive.

Finally, a search function will offer an alternative mode of access: it will be possible to find a document directly, without having to track it down through the ramified structure of the various headings.

*Christine Franquet*  
Public Information Division  
ICRC

Address of the ICRC Web site  
**English:** <http://www.icrc.org>  
**French:** <http://www.cicr.org>

The *Review* now has an electronic address on Internet  
enabling readers to communicate with the editor:  
**[irrcreview.gva@gwn.icrc.org](mailto:irrcreview.gva@gwn.icrc.org)**

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## **Articles submitted for publication in the International Review of the Red Cross**

The *International Review of the Red Cross* invites readers to submit articles relating to the various activities of the International Red Cross and Red Crescent Movement or to international humanitarian law. These will be considered for publication on the basis of merit and relevance to the topics covered by the *Review*.

Manuscripts may be submitted in *English, French, Spanish, Arabic or Russian*.

Texts should be typed, double-spaced, and no longer than 20 pages (or 5,000 words). The word processing software used by the ICRC is AmiPro 3.1. If possible, therefore, documents should be submitted on diskette with the texts in either AmiPro or ASCII.

*Footnotes* should be numbered superscript in the main text. They should be typed, double-spaced, and grouped at the end of the article.

*Bibliographical references* should be given in the original language of publication and should include the following details:

(a) for *books*, the author's initials and surname (in that order), book title (in italics), place of publication, publisher and year of publication (in that order), and page number(s) referred to (p. or pp.);

(b) for *articles*, the author's initials and surname, article title (in inverted commas), title of periodical (in italics), volume number, place of publication, date of publication, and page number(s) referred to (p. or pp.).

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The *International Review of the Red Cross* is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

The *International Review of the Red Cross* is a forum for reflection and comment and serves as a reference work on the mission and guiding principles of the International Red Cross and Red Crescent Movement. It is also a specialized journal in the field of international humanitarian law and other aspects of humanitarian endeavour.

As a chronicle of the international activities of the Movement and a record of events, the *International Review of the Red Cross* is a constant source of information and maintains a link between the components of the International Red Cross and Red Crescent Movement.

The *International Review of the Red Cross* is published six times a year, in five languages:

French: REVUE INTERNATIONALE DE LA CROIX-ROUGE (since October 1869)

English: INTERNATIONAL REVIEW OF THE RED CROSS (since April 1961)

Spanish: REVISTA INTERNACIONAL DE LA CRUZ ROJA (since January 1976)

Arabic: المجلة الدولية للصليب الأحمر (since May-June 1988)

Russian: МЕЖДУНАРОДНЫЙ ЖУРНАЛ КРАСНОГО КРЕСТА (since November-December 1994)

Articles appearing in the *Review* are accessible on the ICRC Web site, under the heading "Publications/Periodicals", at the following addresses:

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INTERNATIONAL  
**REVIEW**  
OF THE RED CROSS